

EXHIBIT

DATE 02/20/2013

HB 529

**WE ARE OPEN FOR BUSINESS, AGAIN!**

**As of April 26, 2012**

**Central Montana Crematorium  
is again at work. Our staff will be  
available to serve you in their usual  
capable, courteous manner.**

**The "emergency" order from the  
Funeral Board, Richard J. Brown,  
chairman, has been rescinded and  
all of our licenses are returned and  
in good standing.**

**Our price remains \$995. Our 24/7  
phone number remains the same,  
538-4400.**

**You have our most sincere  
gratitude for your patience  
during this trying time.**

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1. The first part of the document is a letter from the President of the United States to the Congress, dated January 1, 1861. It is a very important document, as it contains the President's message to the Congress at the beginning of his first term.

**ATTACHMENT 8**  
**SPOJA/CMC COMPLAINT**

08-28-12;17:29 ;From:

To:14064427361 ;

# 3/ 7

Local File Number:

## MONTANA CERTIFICATE OF DEATH

State File Number: 201014-004659

1. DECEDENT'S NAME (First, Middle, Last) Richard Edwin Fleming		AKAs (if any)		23. ACTUAL OR PRESUMED DATE OF DEATH (Month/Day/Year) (Spell Month) July 15, 2010	
2. SEX Male	3. SOCIAL SECURITY NUMBER 482-30-9057	4. Age - last birthday (Years) 80	5a. Under 1 Year (Months/Days) 0/0	5b. Under 1 Day (Hours/Minutes) 0/0	5. DATE OF BIRTH (Month/Day/Year) January 30, 1930
14. PLACE OF DEATH (Check only one) HOSPITAL: <input type="checkbox"/> Inpatient <input type="checkbox"/> Outpatient <input type="checkbox"/> Dead on Arrival		OTHER: <input checked="" type="checkbox"/> Nursing Home/Long term care facility <input type="checkbox"/> Residence <input type="checkbox"/> Hospice <input type="checkbox"/> Other			
15. FACILITY NAME (If not institution, give street and number) Vail Vista Manor		16. CITY/TOWN OR LOCATION OF DEATH Lewistown			
6. BIRTHPLACE (City, and State or Foreign Country) State Center, Iowa		9. MARITAL STATUS <input type="checkbox"/> Never Married <input type="checkbox"/> Married but Separated <input type="checkbox"/> Widowed <input type="checkbox"/> Divorced <input checked="" type="checkbox"/> Married		10. SURVIVING SPOUSE Elaine Talman	
64. DECEDENT'S USUAL OCCUPATION (Give kind of work done during most of working life. Do not use retired.) Extension Agent		65. KIND OF BUSINESS/INDUSTRY Agriculture		8. WAS DECEDENT EVER IN U.S. ARMED FORCES? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
7a. RESIDENCE STATE Montana	7b. COUNTY Fergus	7c. CITY, TOWN, OR LOCATION Lewistown	7d. STREET NUMBER 173 Kolar Lane	7e. ZIP CODE 59457	7f. INDIAN CITY <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
91. DECEDENT'S EDUCATION (Specify only the highest diploma or degree received) <input type="checkbox"/> 8th grade or less <input type="checkbox"/> 9th-12th grade; No diploma <input type="checkbox"/> High School graduate or GED completed <input type="checkbox"/> Some college, but no degree <input type="checkbox"/> Associate's Degree (e.g., AA, AS) <input type="checkbox"/> Bachelor's Degree (e.g., BA, BS) <input type="checkbox"/> Master's Degree (e.g., MA, MS, MEd, MDiv, MFA) <input type="checkbox"/> Doctorate (e.g., PhD, EdD) or Professional degree (e.g., MD, DDS, DVM, LL.D., JD)		92. DECEDENT'S HISPANIC ORIGIN? (Check the box that best describes whether the decedent is Spanish/Hispanic/Latino. Check the No box if the decedent is not Spanish/Hispanic/Latino.) <input checked="" type="checkbox"/> No, not Spanish/Hispanic/Latino <input type="checkbox"/> Yes, Mexican, Mexican American, Chicano <input type="checkbox"/> Yes, Puerto Rican <input type="checkbox"/> Yes, Cuban <input type="checkbox"/> Yes, other Spanish/Hispanic/Latino (Specify)		93. DECEDENT'S RACE (Check one or more races to indicate what the decedent considers himself or herself to be.) <input type="checkbox"/> White <input type="checkbox"/> Black African American <input type="checkbox"/> Other Asian (Specify) <input type="checkbox"/> Native Hawaiian <input type="checkbox"/> Asian Indian <input type="checkbox"/> Chinese <input type="checkbox"/> Filipino <input type="checkbox"/> Japanese <input type="checkbox"/> Guamanian or Chamorro <input type="checkbox"/> Korean <input type="checkbox"/> Vietnamese <input type="checkbox"/> Other Pacific Islander (Specify) <input type="checkbox"/> American Indian or Alaska Native (Name of the enrolled or principal tribe) <input type="checkbox"/> Other (Specify)	
11. FATHER'S NAME (First, Middle, Last) Everet Oakley Fleming		12. MOTHER'S NAME (First, Middle, last name before first marriage) Ora Florence Keeling			
13a. INFORMANT'S NAME Elaine Fleming		13b. RELATION TO DECEDENT Wife		13c. MAILING ADDRESS (Street and Number or Rural Route Number, City or Town, State, Zip Code) 173 Kolar Lane, Lewistown, Montana 59457	
14. METHOD OF DISPOSITION <input type="checkbox"/> Burial <input checked="" type="checkbox"/> Cremation <input type="checkbox"/> Removal from State <input type="checkbox"/> Entombment <input type="checkbox"/> Donation <input type="checkbox"/> Other		19. PLACE OF DISPOSITION Central Montana Crematorium		20. LOCATION (City or Town, State) Lewistown, Montana	
22. SIGNATURE OF FUNERAL SERVICE LICENSEE OR OTHER PERSON IN CHARGE OF DISPOSITION Paul Huff		23. MONTANA LICENSE NO. (if licensee is applicable)		21. NAME AND ADDRESS OF FUNERAL FACILITY Central Montana Crematorium, 901 W Main St, Lewistown, Montana 59457	
ITEMS 24-28 MUST BE COMPLETED BY PERSON WHO PRONOUNCES OR CERTIFIES DEATH		24. DATE PRONOUNCED DEAD (Month/Day/Year) July 15, 2010		25. TIME PRONOUNCED DEAD 23:00 Military	
26. SIGNATURE OF PERSON PRONOUNCING DEATH (only when applicable) Michael Sura, M.D.		27. LICENSE NUMBER 11299		31. WAS MEDICAL EXAMINER OR CORONER CONTACTED? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
28. DATE SIGNED (Month/Day/Year) July 18, 2010		30. ACTUAL OR PRESUMED TIME OF DEATH 22:45 Military Actual			
22. PART I. Enter the chain of events - disease, injury, or complication - that directly caused the death. DO NOT enter terminal events such as cardiac arrest, respiratory arrest, or ventilator disconnection without showing the etiology. DO NOT abbreviate. Enter only one cause on a line. Add additional lines if necessary. IMMEDIATE CAUSE (final disease or condition resulting in death) → a. <u>Dementia</u> DUE TO (or as a consequence of): b. <u>Adult failure to survive the virus</u> DUE TO (or as a consequence of): c. <u></u> DUE TO (or as a consequence of): d. <u></u> CAUSE (disease or injury that initiated the events resulting in death) LAST.					Approximate Interval (Include M, H, Day, Yr, etc.) VERBS
PART II Other significant conditions contributing to death but not resulting in the underlying cause given in Part I					33. WAS AN AUTOPSY PERFORMED? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
					34. WERE AUTOPSY FINDINGS AVAILABLE PRIOR TO COMPLETION OF CAUSE OF DEATH <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
37. MANNER OF DEATH <input checked="" type="checkbox"/> Natural <input type="checkbox"/> Homicide <input type="checkbox"/> Accidental <input type="checkbox"/> Pending investigation <input type="checkbox"/> Suicide <input type="checkbox"/> Could not be determined		38. DID TOBACCO USE CONTRIBUTE TO DEATH? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Probably <input type="checkbox"/> Unknown		35. IF FEMALE <input type="checkbox"/> Not pregnant within past year <input type="checkbox"/> Not pregnant, but pregnant within 42 days of death <input type="checkbox"/> Not pregnant, but pregnant 43 days to 1 year before death <input type="checkbox"/> Pregnant at time of death <input type="checkbox"/> Unknown if pregnant within past year	
DATE OF INJURY (Month/Day/Year) 38.	TIME OF INJURY 39.	INJURED AT WORK 41. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	40. PLACE OF INJURY (e.g., Decedent's Home, Construction Site, Restaurant, Wooded Area)		44. IF TRAFFIC ACCIDENT SPECIFY <input type="checkbox"/> Driver/Operator <input type="checkbox"/> Pedestrian <input type="checkbox"/> Passenger <input type="checkbox"/> Other
43. DESCRIBE HOW INJURY OCCURRED					42. LOCATION (Street and Number or Rural Route, City, Town, State, Zip Code)
45. TO BE COMPLETED BY CERTIFIER: (A certifier can be a MD, PA, APRN, or coroner) <input checked="" type="checkbox"/> Consulting Physician: To the best of my knowledge death occurred at the time, date, and place, and due to the cause(s) and manner stated. <input type="checkbox"/> Pronouncing & Certifying physician: To the best of my knowledge death occurred at the time, date, and place, and due to the cause(s) and manner stated. <input type="checkbox"/> Medical Examiner/Coroner: On the basis of examination and/or investigation, in my opinion, death occurred at the time, date, and place, and due to the cause(s) and manner stated. SIGNATURE <u>Michael Sura</u>					46. DATE CERTIFIED (Month/Day/Year) July 20, 2010
46. NAME AND ADDRESS OF CERTIFIER (PHYSICIAN OR CORONER) Michael Sura 310 Wendell, Lewistown, MT 59457			47. TITLE M.D.		
LOCAL REGISTRAR'S NAME Carr L. Craig			80. DATE FILED (Month/Day/Year) July 20, 2010		

To Be Completed By: Funeral Director

To Be Completed By: Medical Certifier



Local File Number:

## MONTANA CERTIFICATE OF DEATH

State File Number: 201014-004169

1. DECEDENT'S NAME (First, Middle, Last) <b>Melvin Laverne Martin</b>		AKAs (If Any)		29. ACTUAL OR PRESUMED DATE OF DEATH (Month/Day/Year) (Spell Month) <b>June 24, 2010</b>	
2. SEX <b>Male</b>	3. SOCIAL SECURITY NUMBER <b>516-38-3003</b>	Age - last Birthday (Years) <b>71</b>	4a. Under 1 Year Months <b>71</b>	4b. Under 1 Day Hours <b>00</b>	4c. Under 1 Day Minutes <b>00</b>
5. DATE OF BIRTH (Month/Day/Year) <b>April 08, 1939</b>		17. COUNTY OF DEATH <b>Fergus</b>			
14. PLACE OF DEATH (Check only one) HOSPITAL: <input type="checkbox"/> Inpatient <input checked="" type="checkbox"/> ER/Outpatient <input type="checkbox"/> Dead on Arrival OTHER: <input type="checkbox"/> Nursing Home/Long-term care facility <input type="checkbox"/> Residence <input type="checkbox"/> Hospice <input type="checkbox"/> Other					
15. FACILITY NAME (If not institution, give street and number) <b>Central Montana Medical Center</b>			16. CITY, TOWN OR LOCATION OF DEATH <b>Lewistown</b>		
6. BIRTHPLACE (City, and State or Foreign Country) <b>Lewistown, Montana</b>		8. MARITAL STATUS <input type="checkbox"/> Never Married <input type="checkbox"/> Married <input type="checkbox"/> Widowed <input type="checkbox"/> Divorced <input type="checkbox"/> Married but Separated <input type="checkbox"/> Unknown		10. SURVIVING SPOUSE <b>Laurie J. Minnerly</b>	
54. DECEDENT'S USUAL OCCUPATION (Give kind of work done during most of working life. Do not use retired.) <b>Self employed</b>		55. KIND OF BUSINESS/INDUSTRY <b>Carpet and flooring store</b>		8. WAS DECEDENT EVER IN US ARMED FORCES? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
76. RESIDENCE STATE <b>Montana</b>	77. COUNTY <b>Fergus</b>	78. CITY, TOWN, OR LOCATION <b>Lewistown</b>	79. STREET NUMBER <b>414 5th Ave N.</b>	71. ZIP CODE <b>59457</b>	70. INSIDE CITY <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
51. DECEDENT'S EDUCATION (Specify only the highest diploma or degree received) <input type="checkbox"/> 8th grade or less <input type="checkbox"/> 9th-12th grade; No diploma <input checked="" type="checkbox"/> High School graduate or GED completed <input type="checkbox"/> Some college, but no degree <input type="checkbox"/> Associate's Degree (e.g. AA, AS) <input type="checkbox"/> Bachelor's Degree (e.g. BA, BS) <input type="checkbox"/> Master's Degree (e.g. MA, MS, MEd, MDiv, MEd, MEd) <input type="checkbox"/> Doctorate (e.g. PhD, EdD) or Professional degree (e.g. MD, DDS, DVM, LL.D., JD)		52. DECEDENT OF HISPANIC ORIGIN? (Check the box that best describes whether the decedent is Spanish/Hispanic/Latino. Check the No box if the decedent is not Spanish/Hispanic/Latino.) <input checked="" type="checkbox"/> No, not Spanish/Hispanic/Latino <input type="checkbox"/> Yes, Mexican, Mexican American, Chicano <input type="checkbox"/> Yes, Puerto Rican <input type="checkbox"/> Yes, Cuban <input type="checkbox"/> Yes, other Spanish/Hispanic/Latino (Specify)		53. DECEDENT'S RACE (Check one or more races to indicate what the decedent considers himself or herself to be.) <input type="checkbox"/> White <input type="checkbox"/> Black African American <input type="checkbox"/> Native Hawaiian <input type="checkbox"/> Asian Indian <input type="checkbox"/> Chinese <input type="checkbox"/> Filipino <input type="checkbox"/> Japanese <input type="checkbox"/> Guamanian or Chamorro <input type="checkbox"/> Korean <input type="checkbox"/> Vietnamese <input type="checkbox"/> Samoan <input type="checkbox"/> Other Asian (Specify) <input type="checkbox"/> Other Pacific Islander (Specify) <input type="checkbox"/> American Indian or Alaska Native (Name of the enrolled or principal tribe) <input type="checkbox"/> Other (Specify)	
11. FATHER'S NAME (First, Middle, Last) <b>Robert H. Martin</b>		12. MOTHER'S NAME (First, Middle, Last name before first marriage) <b>Claire Ramsey</b>			
13a. INFORMANT'S NAME <b>Laurie J. Martin</b>		13b. RELATION TO DECEDENT <b>Wife</b>		13c. MAILING ADDRESS (Street and Number or Rural Route Number, City or Town, State, Zip Code) <b>414 5th Ave N., Lewistown, Montana 59457</b>	
15. METHOD OF DISPOSITION <input type="checkbox"/> Burial <input checked="" type="checkbox"/> Cremation <input type="checkbox"/> Removal from State <input type="checkbox"/> Entombment <input type="checkbox"/> Donation <input type="checkbox"/> Other		18. PLACE OF DISPOSITION <b>Central Montana Crematorium</b>		20. LOCATION (City or Town, State) <b>Lewistown, Montana</b>	
22. SIGNATURE OF FUNERAL SERVICE LICENSEE OR OTHER PERSON IN CHARGE OF DISPOSITION <b>Paul Huff</b>		23. MONTANA LICENSE NO (if licensee if applicable)		21. NAME AND ADDRESS OF FUNERAL FACILITY <b>Central Montana Crematorium, 801 W Main St, Lewistown, Montana 59457</b>	
ITEMS 24-28 MUST BE COMPLETED BY PERSON WHO PRONOUNCES OR CERTIFIES DEATH		24. DATE PRONOUNCED DEAD (Month/Day/Year) <b>June 24, 2010</b>		25. TIME PRONOUNCED DEAD <b>16:20 Military</b>	
26. SIGNATURE OF PERSON PRONOUNCING DEATH (only when applicable) <b>Annotto Comes, M.D.</b>		27. LICENSE NUMBER <b>9585</b>			
28. DATE SIGNED (Month/Day/Year) <b>June 24, 2010</b>		30. ACTUAL OR PRESUMED TIME OF DEATH <b>16:15 Military Actual</b>		31. WAS MEDICAL EXAMINER OR CORONER CONTACTED? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
CAUSE OF DEATH (See instructions and example) 32. PART I. Enter the chain of events - disease, injury, or infection - that directly caused the death. DO NOT enter terminal events such as cardiac arrest, respiratory arrest, or ventilator dysfunction without showing the etiology. DO NOT abbreviate. Enter only one cause on a line. Add additional lines if necessary. IMMEDIATE CAUSE (final disease or condition resulting in death) → a. <b>Cerebral Artery Dissection</b> DUE TO (or as a consequence of): b. <b>Cerebral Artery Dissection</b> DUE TO (or as a consequence of): c. <b>Cerebral Artery Dissection</b> DUE TO (or as a consequence of): d. <b>Cerebral Artery Dissection</b> DUE TO (or as a consequence of): 33. WAS AN AUTOPSY PERFORMED? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No 34. WERE AUTOPSY FINDINGS AVAILABLE PRIOR TO COMPLETION OF CAUSE OF DEATH? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No 35. APPROXIMATE INTERVAL (include Mo, Yr, Day, Yr, Mo) <b>6 years</b>					
PART II Other significant conditions contributing to death but not resulting in the underlying cause given in Part I <b>Cerebral Artery Dissection</b> <b>Hx of Cerebrovascular accident 2004</b>					
37. MANNER OF DEATH <input checked="" type="checkbox"/> Natural <input type="checkbox"/> Homicide <input type="checkbox"/> Accident <input type="checkbox"/> Pending Investigation <input type="checkbox"/> Suicide <input type="checkbox"/> Could not be determined		38. DID TOBACCO USE CONTRIBUTE TO DEATH? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Probably <input checked="" type="checkbox"/> Unknown		39. IF FEMALE <input type="checkbox"/> Not pregnant within past year <input type="checkbox"/> Not pregnant, but pregnant within 42 days of death <input type="checkbox"/> Not pregnant but pregnant 43 days to 1 year before death <input type="checkbox"/> Pregnant at time of death <input type="checkbox"/> Unknown if pregnant within past year	
40. DATE OF INJURY (Month/Day/Year) <b>08</b>	41. TIME OF INJURY <b>32</b>	42. INJURED AT WORK <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	43. PLACE OF INJURY (e.g. Decedent's Home, Construction Site, Restaurant, Wooded Area)		
44. IF TRAFFIC ACCIDENT SPECIFY <input type="checkbox"/> Driver/Operator <input type="checkbox"/> Pedestrian <input type="checkbox"/> Passenger <input type="checkbox"/> Other			45. LOCATION (Street and Number or Rural Route, City, Town, State, Zip Code)		
46. DESCRIBE HOW INJURY OCCURRED			47. DATE CERTIFIED (Month/Day/Year) <b>June 28, 2010</b>		
48. TO BE COMPLETED BY CERTIFIER: (A certifier can be a MD, PA, APRN, or coroner) <input type="checkbox"/> Certifying Physicians: To the best of my knowledge death occurred at the time, date, and place, and due to the cause(s) and manner stated. <input type="checkbox"/> Pronouncing & Certifying physician: To the best of my knowledge death occurred at the time, date, and place, and due to the cause(s) and manner stated. <input checked="" type="checkbox"/> Medical Examiner/Coroner: On the basis of examination and/or investigation, in my opinion, death occurred at the time, date, and place, and due to the cause(s) and manner stated. SIGNATURE <b>Richard J. Brown</b>			49. LICENSE NO <b>396</b>		
48. NAME AND ADDRESS OF CERTIFIER (PHYSICIAN OR CORONER) <b>Richard J. Brown</b>			50. DATE FILED (Month/Day/Year) <b>June 29, 2010</b>		
51. LOCAL REGISTRAR'S NAME <b>Card L. Craig</b>			52. DATE FILED (Month/Day/Year) <b>June 29, 2010</b>		

To Be Completed By: Funeral Director

To Be Completed By: Medical Certifier

Local File Number:

## MONTANA CERTIFICATE OF DEATH

State File Number: 201014-004174

1. DECEDENT'S NAME (First, Middle, Last) <b>Francis Ellsworth Brown</b>		AKAa (If Any)		29. ACTUAL OR PRESUMED DATE OF DEATH (Month/Day/Year) (Spell Month) <b>June 27, 2010</b>	
2. SEX <b>Male</b>	3. SOCIAL SECURITY NUMBER <b>517-09-9122</b>	4a. Age - last Birthday (Years) <b>95</b>	4b. Under 1 Year Months Days	4c. Under 1 Day Hours Minutes	5. DATE OF BIRTH (Month/Day/Year) <b>January 23, 1915</b>
14. PLACE OF DEATH (Check only one) HOSPITAL: <input checked="" type="checkbox"/> Inpatient <input type="checkbox"/> Outpatient <input type="checkbox"/> Dead on Arrival OTHER: <input type="checkbox"/> Nursing Home/Long-term care facility <input type="checkbox"/> Residence <input type="checkbox"/> Hospice <input type="checkbox"/> Other		17. COUNTY OF DEATH <b>Fergus</b>			
15. FACILITY NAME (If not institution, give street and number) <b>Central Montana Medical Center</b>		16. CITY, TOWN OR LOCATION OF DEATH <b>Lewistown</b>			
6. BIRTHPLACE (City, and State or Foreign Country) <b>Great Range, Montana</b>		9. MARITAL STATUS <input type="checkbox"/> Never Married <input type="checkbox"/> Married but Separated <input type="checkbox"/> Widowed <input type="checkbox"/> Divorced <input type="checkbox"/> Unknown		10. SURVIVING SPOUSE	
84. DECEDENT'S USUAL OCCUPATION (Give kind of work done during most of working life. Do not use retired.) <b>Mechanic - Bar Tender</b>		85. KIND OF BUSINESS/INDUSTRY <b>Grocery - Moose Lodge</b>		8. WAS DECEDENT EVER IN US ARMED FORCES? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
7a. RESIDENCE STATE <b>Montana</b>	7b. COUNTY <b>Fergus</b>	7c. CITY, TOWN, OR LOCATION <b>Lewistown</b>	7d. STREET NUMBER <b>38 Cherry Lane</b>	7e. ZIP CODE <b>59457</b>	7f. INSIDE CITY <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
31. DECEDENT'S EDUCATION (Specify only the highest diploma or degree received) <input type="checkbox"/> 8th grade or less <input type="checkbox"/> 9th-12th grade; No diploma <input type="checkbox"/> High School graduate or GED completed <input type="checkbox"/> Some college, but no degree <input type="checkbox"/> Associate's Degree (e.g., AA, AS) <input type="checkbox"/> Bachelor's Degree (e.g., BA, BS) <input type="checkbox"/> Master's Degree (e.g., MA, MS, MEng, MEd, MSW, MHA) <input type="checkbox"/> Doctorate (e.g., PhD, EdD) or Professional degree (e.g., MD, DDS, DVM, LL.D., JD)		82. DECEDENT OF HISPANIC ORIGIN? (Check the box that best describes whether the decedent is Spanish/Hispanic/Latino. Check the box if the decedent is not Spanish/Hispanic/Latino.) <input checked="" type="checkbox"/> No, not Spanish/Hispanic/Latino <input type="checkbox"/> Yes, Mexican, Mexican American, Chicano <input type="checkbox"/> Yes, Puerto Rican <input type="checkbox"/> Yes, Cuban <input type="checkbox"/> Yes, other Spanish/Hispanic/Latino (Specify)		83. DECEDENT'S RACE (Check one or more races to indicate what the decedent considers himself or herself to be.) <input checked="" type="checkbox"/> White <input type="checkbox"/> Black African American <input type="checkbox"/> Native Hawaiian <input type="checkbox"/> Asian Indian <input type="checkbox"/> Chinese <input type="checkbox"/> Filipino <input type="checkbox"/> Japanese <input type="checkbox"/> Guamanian or Chamorro <input type="checkbox"/> Korean <input type="checkbox"/> Vietnamese <input type="checkbox"/> Samoan <input type="checkbox"/> Other Asian (Specify) <input type="checkbox"/> Other Pacific Islander (Specify) <input type="checkbox"/> American Indian or Alaska Native (Name of the enrolled principal tribe) <input type="checkbox"/> Other (Specify)	
11. FATHER'S NAME (First, Middle, Last) <b>Raymond L. Brown</b>		12. MOTHER'S NAME (First, Middle, last name before first marriage) <b>Gladys B. Beltrick</b>			
13a. INFORMANT'S NAME <b>Elsie Shammel</b>		13b. RELATION TO DECEDENT <b>Daughter</b>		13c. MAILING ADDRESS (Street and Number or Rural Route Number, City or Town, State, Zip Code) <b>515 Stendal Road, Lewistown, Montana 59457</b>	
18. METHOD OF DISPOSITION <input checked="" type="checkbox"/> Burial <input type="checkbox"/> Cremation <input type="checkbox"/> Removal from State <input type="checkbox"/> Entombment <input type="checkbox"/> Donation <input type="checkbox"/> Other		19. PLACE OF DISPOSITION <b>Central Montana Crematorium</b>		20. LOCATION (City or Town, State) <b>Lewistown, Montana</b>	
22. SIGNATURE OF FUNERAL SERVICE LICENSEE OR OTHER PERSON IN CHARGE OF DISPOSITION <b>Paul Huff</b>		23. MONTANA LICENSE NO (if licensee is applicable)		21. NAME AND ADDRESS OF FUNERAL FACILITY <b>Central Montana Crematorium, 801 W Main St, Lewistown, Montana 59457</b>	
ITEMS 24-28 MUST BE COMPLETED BY PERSON WHO PRONOUNCES OR CERTIFIES DEATH		24. DATE PRONOUNCED DEAD (Month/Day/Year) <b>June 27, 2010</b>		25. TIME PRONOUNCED DEAD <b>13:14 Military</b>	
26. SIGNATURE OF PERSON PRONOUNCING DEATH (only when applicable) <b>William R. Holmes, D.O.</b>		27. LICENSE NUMBER <b>5370</b>			
28. DATE SIGNED (Month/Day/Year) <b>June 27, 2010</b>		30. ACTUAL OR PRESUMED TIME OF DEATH <b>13:14 Military Actual</b>		31. WAS MEDICAL EXAMINER OR CORONER CONTACTED? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
CAUSE OF DEATH (See instructions and example) 22. PART 1. After the chain of events - diseases, injuries, or complications - that directly caused the death. DO NOT enter terminal events such as cardiac arrest, respiratory arrest, or Ventricular Fibrillation without showing the etiology. DO NOT abbreviate. List only one cause on a line. Add additional lines if necessary. IMMEDIATE CAUSE (Final disease or condition resulting in death) → a. <b>Myocardial Infarction</b> <b>Myocardia</b> DUE TO (or as a consequence of): Sequentially list conditions, if any, leading to the cause listed on line a. Enter the UNDERLYING CAUSE (known or injury that initiated the events resulting in death) LAST. b. <b>COPD</b> DUE TO (or as a consequence of): c. DUE TO (or as a consequence of):					Approximate Interval: (Include M, W, Day, Yr, etc.) <b>days</b>
PART II Other significant conditions contributing to death but not resulting in the underlying cause given in Part I					33. WAS AN AUTOPSY PERFORMED? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
37. MANNER OF DEATH <input checked="" type="checkbox"/> Natural <input type="checkbox"/> Homicide <input type="checkbox"/> Accident <input type="checkbox"/> Pending investigation <input type="checkbox"/> Suicide <input type="checkbox"/> Could not be Determined					34. WERE AUTOPSY FINDINGS AVAILABLE PRIOR TO COMPLETION OF CAUSE OF DEATH <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
35. DID TOBACCO USE CONTRIBUTE TO DEATH? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Probably <input type="checkbox"/> Unknown		36. IF FEMALE <input type="checkbox"/> Not pregnant within past year <input type="checkbox"/> Not pregnant, but pregnant within 42 days of death <input type="checkbox"/> Not pregnant, but pregnant 43 days to 1 year before death		38. IF FEMALE <input type="checkbox"/> Pregnant at time of death <input type="checkbox"/> Unknown if pregnant within past year	
38. DATE OF INJURY (Month/Day/Year) <b>38.</b>	39. TIME OF INJURY <b>39.</b>	40. INJURED AT WORK <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	41. PLACE OF INJURY (e.g., Decedent's Home, Construction Site, Restaurant, Wooded Area)		44. IF TRAFFIC ACCIDENT SPECIFY <input type="checkbox"/> Driver/Operator <input type="checkbox"/> Pedestrian <input type="checkbox"/> Passenger <input type="checkbox"/> Other
43. DESCRIBE HOW INJURY OCCURRED					42. LOCATION (Street and Number or Rural Route, City, Town, State, Zip Code)
45. TO BE COMPLETED BY CERTIFIER: (A certifier can be a MD, PA, APRN, or coroner) <input checked="" type="checkbox"/> Certifying Physician: To the best of my knowledge death occurred at the time, date, and place, and due to the cause(s) and manner stated. <input type="checkbox"/> Pending investigation: To the best of my knowledge death occurred at the time, date, and place, and due to the cause(s) and manner stated. <input type="checkbox"/> Medical Examiner/Coroner: On the basis of examination and/or investigation, in my opinion, death occurred at the time, date, and place, and due to the cause(s) and manner stated. SIGNATURE <b>William R. Holmes</b>					46. DATE CERTIFIED (Month/Day/Year) <b>June 27, 2010</b>
47. NAME AND ADDRESS OF CERTIFIER (PHYSICIAN OR CORONER) <b>William R. Holmes</b>			48. LICENSE NO <b>5370</b>		47. TITLE <b>D.O.</b>
49. NAME AND ADDRESS OF CERTIFIER (PHYSICIAN OR CORONER) <b>310 Wendell Ave Suite 103, Lewistown, MT 59457</b>			50. DATE FILED (Month/Day/Year) <b>June 29, 2010</b>		51. LOCAL REGISTRAR'S NAME <b>Carri L. Craig</b>

To Be Completed By: Funeral Director

To Be Completed By: Medical Certifier

Local File Number:

## MONTANA CERTIFICATE OF DEATH

State File Number: 201014-006826

1. DECEDENT'S NAME (First, Middle, Last) Pearl Jeannette Brown		AKAs (If Any)		29. ACTUAL OR PRESUMED DATE OF DEATH (Mo/Day/Yr) (Spell Month) October 16, 2010	
2. SEX Female	3. SPECIAL OCCURRENCE NUMBER 516-30-8913	4a. Age - last birthday (Years) 91	4b. Under 1 Year Months Days	4c. Under 1 Day Hours Minutes	5. DATE OF BIRTH (Month, Day, Year) November 18, 1918
14. PLACE OF DEATH (Check only one) HOSPITAL: <input checked="" type="checkbox"/> Inpatient <input type="checkbox"/> ER/Outpatient <input type="checkbox"/> Dead on Arrival OTHER: <input type="checkbox"/> Nursing Home/Long-term care facility <input type="checkbox"/> Residence <input type="checkbox"/> Hospice <input type="checkbox"/> Other		17. COUNTY OF DEATH Fergus			
10. FACILITY NAME (If not institution, give street and number) Central Montana Medical Center			10. CITY, TOWN OR LOCATION OF DEATH Lewistown		
6. BIRTHPLACE (City, and State or Foreign Country) Montana		8. MARITAL STATUS <input type="checkbox"/> Never Married <input type="checkbox"/> Married but Separated <input type="checkbox"/> Widowed <input checked="" type="checkbox"/> Divorced <input type="checkbox"/> Unknown		10. SURVIVING SPOUSE Raymond Holt Brown	
44. DECEDENT'S USUAL OCCUPATION (Give kind of work done during most of working life. Do not use railroad.) Cosmetologist		45. KIND OF BUSINESS/INDUSTRY Beauty Industry		46. WAS DECEDENT EVER IN US ARMED FORCES? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
7a. RESIDENCE STATE Montana	7b. COUNTY Fergus	7c. CITY, TOWN, OR LOCATION Lewistown	7d. STREET NUMBER 1209 7th Ave n.	7e. ZIP CODE 59457	7f. INSIDE CITY <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
11. DECEDENT'S EDUCATION (Specify only the highest diploma or degree received) <input type="checkbox"/> 8th grade or less <input type="checkbox"/> 9th-12th grade; No diploma <input checked="" type="checkbox"/> High School graduate or GED completed <input type="checkbox"/> Some college, but no degree <input type="checkbox"/> Associates Degree (e.g. AA, AS) <input type="checkbox"/> Bachelor's Degree (e.g. BA, AB, BS) <input type="checkbox"/> Master's Degree (e.g. MA, MS, MEng, MEd, MSW, MJA) <input type="checkbox"/> Doctorate (e.g. PhD, EdD) or Professional degree (e.g. MD, DDS, DVM, LL.D., JD)		12. DECEDENT OF HISPANIC ORIGIN? (Check the box that best describes whether the decedent is Spanish/Hispanic/Latino. Check the No box if the decedent is not Spanish/Hispanic/Latino.) <input checked="" type="checkbox"/> No, not Spanish/Hispanic/Latino <input type="checkbox"/> Yes, Mexican, Mexican American, Chicana <input type="checkbox"/> Yes, Puerto Rican <input type="checkbox"/> Yes, Cuban <input type="checkbox"/> Yes, other Spanish/Hispanic/Latino (Specify)		13. DECEDENT'S RACE (Check one or more boxes to indicate what the decedent considers himself or herself to be.) <input checked="" type="checkbox"/> White <input type="checkbox"/> Black African American <input type="checkbox"/> Native Hawaiian <input type="checkbox"/> Asian Indian <input type="checkbox"/> Chinese <input type="checkbox"/> Filipino <input type="checkbox"/> Japanese <input type="checkbox"/> Guamanian or Chamorro <input type="checkbox"/> Korean <input type="checkbox"/> Vietnamese <input type="checkbox"/> Samoan <input type="checkbox"/> Other Asian (Specify) <input type="checkbox"/> Other Pacific Islander (Specify) <input type="checkbox"/> American Indian or Alaska Native (Name of the enrolled or principal tribe) <input type="checkbox"/> Other (Specify)	
11. FATHER'S NAME (First, Middle, Last) Jethro Wareham		12. MOTHER'S NAME (First, Middle, last name before first marriage) Lillian Montgomery			
13a. INFORMANT'S NAME Mary Lee Comes		13b. RELATION TO DECEDENT Daughter		13c. MAILING ADDRESS (Street and Number or Rural Route Number, City or Town, State, Zip Code) 2264 East Fork Lewistown, Montana 59457	
14. METHOD OF DISPOSITION <input type="checkbox"/> Burial <input checked="" type="checkbox"/> Cremation <input type="checkbox"/> Removal from State <input type="checkbox"/> Entombment <input type="checkbox"/> Donation <input type="checkbox"/> Other		15. PLACE OF DISPOSITION Central Montana Crematorium		20. LOCATION (City or Town, State) Lewistown, Montana	
22. SIGNATURE OF FUNERAL SERVICE LICENSEE OR OTHER PERSON IN CHARGE OF DISPOSITION Paul Huff		23. MONTANA LICENSE NO (if licensee is applicable)		21. NAME AND ADDRESS OF FUNERAL FACILITY Central Montana Crematorium, 801 W Main St, Lewistown, Montana 59457	
ITEMS 24-28 MUST BE COMPLETED BY PERSON WHO PRONOUNCES OR CERTIFIES DEATH		24. DATE PRONOUNCED DEAD (Month/Day/Year) October 16, 2010		26. TIME PRONOUNCED DEAD 06:30 Military	
25. SIGNATURE OF PERSON PRONOUNCING DEATH (only when applicable) Kristopher Cunningham, M.D.		27. LICENSE NUMBER 11608		28. DATE SIGNED (Month/Day/Year) October 16, 2010	
29. ACTUAL OR PRESUMED TIME OF DEATH 05:25 Military Actual		31. WAS MEDICAL EXAMINER OR CORONER CONTACTED? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
32. PART I Enter the chain of events - diseases, injuries, or complications - that directly caused the death. DO NOT enter terminal events such as cardiac arrest, respiratory arrest, or ventricular fibrillation without showing the underlying cause. DO NOT abbreviate. Enter only one cause on a line. Add additional lines if necessary. IMMEDIATE CAUSE (final disease or condition resulting in death) → a. <u>Cardiac Arrest</u> DUE TO (as a consequence of): b. <u>Interior Myocardial Infarction</u> DUE TO (as a consequence of): c. <u>ACSVD Spontaneous</u> DUE TO (as a consequence of): 3. <u>Spontaneous</u> DUE TO (as a consequence of):					Approximate Interval: (Include Mo, D, Yr, min.) 2 days 2 days 30 years
PART II Other significant conditions contributing to death but not resulting in the underlying cause given in Part I					33. WAS AN AUTOPSY PERFORMED? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
37. MANNER OF DEATH <input checked="" type="checkbox"/> Natural <input type="checkbox"/> Homicide <input type="checkbox"/> Accident <input type="checkbox"/> Pending Investigation <input type="checkbox"/> Suicide <input type="checkbox"/> Could not be Determined					34. WERE AUTOPSY FINDINGS AVAILABLE PRIOR TO COMPLETION OF CAUSE OF DEATH <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
35. DID TOBACCO USE CONTRIBUTE TO DEATH? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Probably <input type="checkbox"/> Unknown		36. IF FEMALE <input type="checkbox"/> Not pregnant within past year <input type="checkbox"/> Not pregnant, but pregnant within 42 days of death <input type="checkbox"/> Not pregnant, but pregnant 43 days to 1 year before death		38. IF TRAFFIC ACCIDENT SPECIFY <input type="checkbox"/> Driver/Operator <input type="checkbox"/> Pedestrian <input type="checkbox"/> Passenger <input type="checkbox"/> Other	
DATE OF INJURY (Month, Day, Year) 38.	TIME OF INJURY 39.	INJURED AT WORK 41. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	40. PLACE OF INJURY (e.g. Decedent's Home, Construction Site, Restaurant, Wooded Area)		42. LOCATION (Street and Number or Rural Route, City, Town, State, Zip Code)
43. DESCRIBE HOW INJURY OCCURRED					42. LOCATION (Street and Number or Rural Route, City, Town, State, Zip Code)
45. TO BE COMPLETED BY CERTIFIER: (A certifier can be a MD, PA, APRN, or coroner) <input checked="" type="checkbox"/> Certifying Physician: To the best of my knowledge death occurred at the time, date, and place, and due to the cause(s) and manner stated. <input type="checkbox"/> Pronouncing & Certifying physician: To the best of my knowledge death occurred at the time, date, and place, and due to the cause(s) and manner stated. <input type="checkbox"/> Medical Examiner/Coroner: On the basis of a certification and/or investigation, in my opinion, death occurred at the time, date, and place, and due to the cause(s) and manner stated.					46. DATE CERTIFIED (Month, Day, Year) October 18, 2010
SIGNATURE <u>Kristopher Cunningham</u>					48. LICENSE NO 11608
45. NAME AND ADDRESS OF CERTIFIER (PHYSICIAN OR CORONER) Kristopher Cunningham 224 W Main Suite 403, Lewistown, MT 59457					47. TITLE M.D.
LOCAL REGISTRAR'S NAME Carr L. Crain					50. DATE FILED (Mo/Day/Yr) October 20, 2010

To Be Completed By: Funeral Director

To Be Completed By: Medical Certifier

Local File Number:

## MONTANA CERTIFICATE OF DEATH

State File Number: 201014-004413

1. DECEDENT'S NAME (First, Middle, Last) Elisabeth Margaret Coolidge		AKAs (If Any)		23. ACTUAL OR PRESUMED DATE OF DEATH (Mo/Day/Yr) (Spell Month) June 30, 2010 Approximate	
2. SEX Female	3. SOCIAL SECURITY NUMBER 311-32-8863	Age - Last Birthday (Year) 89	4a. Under 1 Year Months Days	4b. Under 1 Day Hours Minutes	5. DATE OF BIRTH (Month, Day, Year) March 08, 1921
14. PLACE OF DEATH (Check only one) HOSPITAL: <input checked="" type="checkbox"/> Inpatient <input type="checkbox"/> Outpatient <input type="checkbox"/> Dead on Arrival		OTHER: <input type="checkbox"/> Nursing Home/Long term care facility <input type="checkbox"/> Residences <input type="checkbox"/> Hospice <input type="checkbox"/> Other			
15. FACILITY NAME (If not institution, give street and number) Central Montana Medical Center		16. CITY/TOWN OR LOCATION OF DEATH Lewistown			
6. BIRTHPLACE (City, and State or Foreign Country) East Chicago, Indiana		9. MARITAL STATUS <input checked="" type="checkbox"/> Never Married <input type="checkbox"/> Married but Separated <input type="checkbox"/> Widowed <input type="checkbox"/> Divorced		10. SURVIVING SPOUSE Harold Lane Coolidge	
54. DECEDENT'S USUAL OCCUPATION (Give kind of work done during most of working life. Do not use retired.) Nurse		55. KIND OF BUSINESS/INDUSTRY Health care		8. WAS DECEDENT EVER IN U.S. ARMED FORCES? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
7a. RESIDENCE STATE Montana	7b. COUNTY Fergus	7c. CITY, TOWN, OR LOCATION Lewistown	7d. STREET NUMBER 916 Mountain View Drive	7e. ZIP CODE 59457	7f. INSIDE CITY <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
61. DECEDENT'S EDUCATION (Specify only the highest diploma or degree received) <input type="checkbox"/> 8th grade or less <input type="checkbox"/> 9th-12th grade; No diploma <input type="checkbox"/> High School graduate or GED completed <input type="checkbox"/> Some college, but no degree <input type="checkbox"/> Associate's Degree (e.g., AA, AS) <input type="checkbox"/> Bachelor's Degree (e.g., BA, BS) <input type="checkbox"/> Master's Degree (e.g., MA, MS, MEd, MDiv, MEdA) <input type="checkbox"/> Doctorate (e.g., PhD, EdD) or Professional degree (e.g., MD, DDS, DVM, LL.D., JD)		62. DECEDENT OF HISPANIC ORIGIN? (Check the box that best describes whether the decedent is Spanish/Hispanic/Latino. Check the No box if the decedent is not Spanish/Hispanic/Latino.) <input checked="" type="checkbox"/> No, not Spanish/Hispanic/Latino <input type="checkbox"/> Yes, Mexican, Mexican American, Chicano <input type="checkbox"/> Yes, Puerto Rican <input type="checkbox"/> Yes, Cuban <input type="checkbox"/> Yes, other Spanish/Hispanic/Latino (Specify)		63. DECEDENT'S RACE (Check one or more races to indicate what the decedent considers himself or herself to be.) <input type="checkbox"/> White <input type="checkbox"/> Black African American <input type="checkbox"/> Other Asian (Specify) <input type="checkbox"/> Native Hawaiian <input type="checkbox"/> Other Pacific Islander (Specify) <input type="checkbox"/> Chinese <input type="checkbox"/> Filipino <input type="checkbox"/> Japanese <input type="checkbox"/> Guamanian or Chamorro <input type="checkbox"/> Korean <input type="checkbox"/> Vietnamese <input type="checkbox"/> American Indian or Alaska Native (Name of the enrolled or principal tribe) <input type="checkbox"/> Other (Specify)	
11. FATHER'S NAME (First, Middle, Last) Stephen Unknown Balo		12. MOTHER'S NAME (First, Middle, last name before first marriage) Theresa Unknown Zabara			
13a. INFORMANT'S NAME Harold Lane Coolidge		13b. RELATION TO DECEDENT Husband		13c. MAILING ADDRESS (Street and Number or Rural Route Number, City or Town, State, Zip Code) 916 Mountain View Drive, Lewistown, Montana	
18. METHOD OF DISPOSITION <input type="checkbox"/> Burial <input checked="" type="checkbox"/> Cremation <input type="checkbox"/> Removal from State <input type="checkbox"/> Donation <input type="checkbox"/> Other		19. PLACE OF DISPOSITION Central Montana Crematorium		20. LOCATION (City or Town, State) Lewistown, Montana	
22. SIGNATURE OF FUNERAL SERVICE LICENSEE OR OTHER PERSON IN CHARGE OF DISPOSITION Thomas Potranek		23. MONTANA LICENSE NO. (if license is applicable) 792		21. NAME AND ADDRESS OF FUNERAL FACILITY Central Montana Crematorium, 301 W Main St, Lewistown, Montana 59457	
ITEMS 24-28 MUST BE COMPLETED BY PERSON WHO PRONOUNCES OR CERTIFIES DEATH		24. DATE PRONOUNCED DEAD (Month/Day/Year) June 30, 2010		25. TIME PRONOUNCED DEAD 16:45 Military	
26. SIGNATURE OF PERSON PRONOUNCING DEATH (only when applicable) Richard N. Taylor Jr., M.D.		27. LICENSE NUMBER 4660		28. DATE SIGNED (Month/Day/Year) July 09, 2010	
29. ACTUAL OR PRESUMED TIME OF DEATH 16:45 Military Approximate		30. WAS MEDICAL EXAMINER OR CORONER CONTACTED? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		31. WAS MEDICAL EXAMINER OR CORONER CONTACTED? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
32. PART I. Enter the chain of events - disease, injury, or complication - that directly caused the death. DO NOT enter terminal events such as cardiac arrest, respiratory arrest, or ventricular fibrillation without stating the etiology. DO NOT abbreviate. Enter only one cause on a line. Add additional lines if necessary. IMMEDIATE CAUSE (Final diagnosis of condition leading to death) → a. Pulmonary Emboli DUE TO (or as a consequence of): b. DUE TO (or as a consequence of): c. DUE TO (or as a consequence of): d. DUE TO (or as a consequence of): CAUSE (disease or injury that initiated the events resulting in death) LAST.					Approximate interval: (Include 16h, 17h, Day, Yr, etc.) 7 Days
PART II Other significant conditions contributing to death but not resulting in the underlying cause given in Part I					33. WAS AN AUTOPSY PERFORMED? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
34. WERE AUTOPSY FINDINGS AVAILABLE PRIOR TO COMPLETION OF CAUSE OF DEATH <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
37. MANNER OF DEATH <input checked="" type="checkbox"/> Natural <input type="checkbox"/> Homicide <input type="checkbox"/> Accident <input type="checkbox"/> Pending Investigation <input type="checkbox"/> Suicide <input type="checkbox"/> Could not be Determined		35. DID TOBACCO USE CONTRIBUTE TO DEATH? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Probably <input type="checkbox"/> Unknown		36. IF FEMALE <input type="checkbox"/> Not pregnant within past year <input type="checkbox"/> Not pregnant, but pregnant within 42 days of death <input type="checkbox"/> Not pregnant, but pregnant 43 days to 1 year before death <input type="checkbox"/> Pregnant at time of death <input type="checkbox"/> Unknown if pregnant within past year	
DATE OF INJURY (Month, Day, Year) 38.	TIME OF INJURY 39.	INJURED AT WORK 41. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	40. PLACE OF INJURY (e.g., Decedent's Home, Construction Site, Restaurant, Wooded Area) 42. LOCATION (Street and Number or Rural Route, City, Town, State, Zip Code)		
43. DESCRIBE HOW INJURY OCCURRED			44. IF TRAFFIC ACCIDENT SPECIFY <input type="checkbox"/> Driver/Operator <input type="checkbox"/> Pedestrian <input type="checkbox"/> Passenger <input type="checkbox"/> Other		
45. TO BE COMPLETED BY CERTIFIER: (A certifier can be a MD, PA, APRN, or coroner) <input checked="" type="checkbox"/> Certifying Physician: To the best of my knowledge death occurred at the time, date, and place, and due to the cause(s) and manner stated. <input type="checkbox"/> Pronouncing & Certifying physician: To the best of my knowledge death occurred at the time, date, and place, and due to the cause(s) and manner stated. <input type="checkbox"/> Medical Examiner/Coroner: On the basis of examination and/or investigation, in my opinion, death occurred at the time, date, and place, and due to the cause(s) and manner stated. SIGNATURE Richard N. Taylor Jr.					46. DATE CERTIFIED (Month, Day, Year) June 30, 2010
48. NAME AND ADDRESS OF CERTIFIER (PHYSICIAN OR CORONER) Richard N. Taylor Jr. 310 WENDELL AVE, Lewistown, MT 59457			LOCAL REGISTRAR'S NAME Carli L. Craig		47. TITLE M.D. 49. DATE FILED (Mo/Day/Yr) July 09, 2010

To Be Completed By: Funeral Director

To Be Completed By: Medical Certifier

**ATTACHMENT 9**  
**SPOJA/CMC COMPLAINT**

## AUTHORIZATION AND DIRECTION

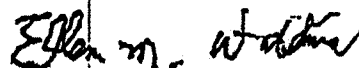
AND

## TERMINATION OF AUTHORIZATION TO CLOYD FUNERAL HOME &amp; CREMATION SERVICES

IN ACCORDANCE WITH INSTRUCTIONS OF ELLEN M. WATKINS conveyed through my power of attorney, David Ward, the following is to be done:

1. Daniel Duane Watkins executed and made adequate provisions for payment for his cremation at Central Montana Crematorium, Inc. and his ashes were to be held by them until called for by the undersigned;
2. All cremation work is to be done by Central Montana Crematorium, Inc. and the undersigned cancels any agreements executed with Cloyd Funeral Home because a) such was not needed, and b) Richard Brown knew that the aforesaid provisions had been made and Ellen M. Watkins did not expect to enter any further agreements or pay any additional expenses due to the actions taken by Cloyd's since the decedent had already made his own arrangements and executed a proper Authorization for Cremation and Disposition so that no further action need be taken by the undersigned;
3. Any further contact with the family of Daniel Duane Watkins shall be made through our attorney, William A. Spoja, Jr.

Dated this 20<sup>th</sup> day of January, 2012



Ellen M. Watkins



David W. Ward pro se and as  
Attorney in fact.

January 20, 2012

Original of the above received this date/

*See below*

Cloyd Funeral Home and Cremation Svcs.

*No one here and no one answered 538-8711  
so I put this under the office door.  
M. L. Spoj*

**ATTACHMENT 10**  
**SPOJA/CMC COMPLAINT**

## Joyce Marie (Harvey) Sheppard

Joyce Marie (Harvey) Sheppard, 86, of Lewistown died Aug. 29, 2012, at home after a battle with cancer.

She was born in Room 7 in the Judith Gap Hotel on May 26, 1926, to Maude and Jim Harvey. Joyce was born with a smile on her face, which mostly remained for the rest of her life. Joyce passed away at home surrounded by the family who loved her.

Cremation has taken place under the direction of Central Montana Crematorium. A celebration of her life will take place on Monday, Sept. 3 at 11:30 a.m. at Celebration Community Fellowship, located on Highway 87 West of Lewistown. A lunch will be served after the celebration.



Joyce graduated from Buffalo High School in Buffalo, Mont., where she made life-long friends. In 1945, Joyce graduated from telegraph school in Great Falls and began working as a telegraph operator on Aug. 1, 1945, just in time to handle train orders for the freight trains and many troop trains bringing the servicemen and women back to their homes at the end of World War II. She enjoyed the work, especially all of the attention

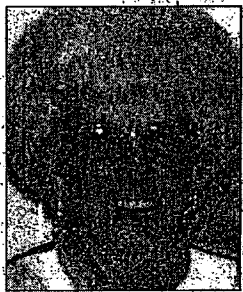
the thousands of servicemen showered on her as they passed through the many train stations she worked at. These were times before air conditioning, and the passenger car windows were mostly open. This allowed for waving, shouting and, from some, blowing kisses her way.

Joyce worked the "extra board" for some years before acquiring a regular job at one station. She made well over 100 moves from station to station, working some days and afternoons, but mostly nights. For several years, she worked seven days a week without overtime being paid.

She especially enjoyed working nights and the early summer mornings when many times she was the only person awake in some of the towns.

Joyce married Vance Sheppard at Great Falls on April 1, 1948. To this union, Barbara Ann Sheppard (Tarleton) was born on Sept. 18, 1951, and James Edgar Sheppard was born June 11, 1957. Barbara had two children, Aaron and Sara. Barbara, Aaron and Sara reside in Denver. Jim had two daughters, Jami Lee Sheppard of Stanford and Nikki Marie Sheppard of Missoula.

Joyce and Vance both worked 40 years for the Great Northern Railroad, and then Burlington Northern, before retiring in 1983.



Joyce took a great interest in crafts of many types, such as macramé, needlepoint, quilting, doll making and ceramics. Anything she became interested in she gave her full attention, and often there were not enough hours in the day for her accomplishments. She was a meticulous worker.

Joyce was a wonderful pie-maker, who was very proud of her crusts. She entered the Chokecherry Festival contest for a number of years and won 10 first places, entering her pies. She also won several "Best of Shows."

Throughout her life, she collected a variety of glassware with her favorite items being cake stands. Despite her

love of cake stands, she donated several to be auctioned off for charitable causes. She also had a nice collection of Royal Albert Silver Bird pattern china from England.

Joyce belonged to the VFW Auxiliary for 60 years, joining in Harlem and continuing in Lewistown. She was always interested in the various branches of the military and took a special interest in the Veterans' Memorial. She was instrumental in having Joe Halco sculpt the army nurse at the Memorial. She was the instigator of the large bronze plaque, which lists all of the military service people from this area who served in the various military branches in all the wars the United States was involved in.

Beginning in the year 2000, Joyce began the difficult task of writing a book on the Buffalo School years from 1910-1965. She purchased a computer and began to write with the assistance of several former schoolmates. After many hours of research, she completed a spiral bound 375-page work of art in July of 2001, which was just in time for a Buffalo all-school reunion in August 2001.

Much could be written about the great sense of humor Joyce possessed. She was well known, among all who were privileged to have known her, for her ability to make people laugh.

Joyce was a very thoughtful and giving person. She truly was one who would rather give than receive.

She was extremely generous to her two children and four grandkids, helping her three granddaughters through college.

She was preceded in death by her parents and three brothers, Aaron, Richard and Kenneth.

She is survived by her husband, Vance; daughter, Barbara, and son, Jim, and four grandchildren, Sara, Aaron, Jami and Nikki; two sisters, Kathryn and Patricia; and several nieces and nephews. She is also survived by brother-in-law Larry Sheppard and sister-in-law Mickey James.



RECEIVED

MAR 01 2004



STATE OF MONTANA  
DEPARTMENT OF LABOR & INDUSTRY  
BUSINESS STANDARDS DIVISION  
301 SOUTH PARK, 4<sup>TH</sup> FLOOR  
PO BOX 200513  
HELENA, MONTANA 59620-0513  
(406) 841-2300

FOR OFFICE USE ONLY

Complaint # 2004-7-AJR

Please print, type, or use computer to complete form. BOARD NAME: FUNERAL SERVICE

COMPLAINT AGAINST: William A. Spoja, Jr. LICENSE # 749  
(If Known)  
PROFESSION/OCCUPATION TYPE: Crematory Operator  
BUSINESS/FIRM NAME: Central Montana Crematorium, Inc. PHONE # 406-538-4400  
ADDRESS: PO Box 882 100 Cattail Drive Lewistown, MT 59457  
Street or PO Box City/State Zip Code

NATURE OF COMPLAINT: Please describe in detail the nature of the complaint, giving dates and other information. If service is part of the complaint, give information about telephone calls, contracts, etc. Attach additional sheet if necessary. Please see attached letter and documents

LIST OF WITNESSES AND EVIDENCE:

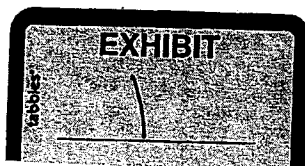
WHAT ACTION ARE YOU REQUESTING OF THE BOARD OR DEPARTMENT?  
To inform Mr. Spoja of what duties he can and cannot perform  
as a crematory operator; especially relating to pre-arrangements or  
pre-paid services.

COMPLAINANT'S NAME: James E. Harris PHONE#: 406-538-8755  
Print Here

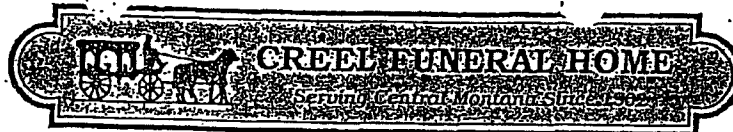
COMPLAINANT'S ADDRESS: PO Box 991 Lewistown, MT 59457  
Street or PO Box City/State Zip Code

I hereby release the licensee in question from the bond of confidentiality in this matter. The facts and matters contained herein are true, accurate and correct to the best of my knowledge. Complaint form must be signed and notarized.

COMPLAINANT'S SIGNATURE: James E. Harris DATE: 2/26/04  
Subscribed and Sworn to before me the 26<sup>th</sup> day of February, 2004



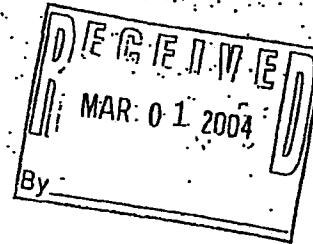
Gail D. Nibel  
Notary Public for the State of Montana  
Residing at Christina  
My Commission Expires 2-1-2008



James E. Harris, President

February 23, 2004

State of Montana  
Department of Labor & Industry  
301 South Park, 4<sup>th</sup> Floor  
P.O. Box 200513  
Helena, MT 59620-0513



Re: Services for Noble Murray, deceased and Central Montana Crematorium, Inc.

The reason for my contacting you is a concern regarding the practices and procedures followed by the new Central Montana Crematorium, Inc. in Lewistown. While I have been contracting with their services for cremation since their opening in October, and things have gone smoothly thus far, I am concerned regarding a recent experience.

On December 17, 2003 at 5:40 a.m., I received a call from the Central Montana-Skilled Nursing Center regarding a Mr. Noble Murray who had passed away and that my services were needed. (Noble had pre-arranged his funeral with me (Creel Funeral Home) in July 2002 and as late as October 2003 had visited with me about requested obituary revisions). He was quoted costs and I also informed him about veteran's benefits that would be available to him. He did not wish to prepay at that time but did provide veteran's papers and obituary information for his pre-need file and requested cremation with inurnment at Fort Harrison at the time of his death. Upon his death on December 17, I made the removal and contacted his immediate family, a sister, Jean Trammell-Wallace. She and her son came in to make the arrangements. It was the usual arrangement conference until I started going over the Contract for Goods and Services with her. She told me that all monies were pre-paid to the Central Montana Crematorium, Inc. and was told by their manager that both local funeral homes were affiliated with them. I told her that this was not true-that I use CMCI as an independent crematory and give families an option as to what crematory they desire to use. I emphasized that Creel Funeral Home is not affiliated whatsoever with Central Montana Crematorium, Inc.

I phoned CMCI, and Al Gallagher, manager, informed me that \$675.00 had been set up for Noble Murray's necessary total expenses. He asked how this could be handled; I requested a check for \$ 475.00 to credit the family towards my services and that he would have to talk to Bill Spoja, the owner of the crematorium; his direct boss. Bill phoned me, and asked why I should receive \$475.00 of the \$675.00. I told him that I had made the removal, had met with the family, and had done all of the normal procedures

during an arrangement conference and had readied Mr. Murray to bring to the crematory. I am enclosing a copy of his check and also a copy of his advertisement as it appears in the local Lewistown News Argus.

I feel he is in violation of 24.147.302 (5) as pre-arrangements or pre-paid services should be made with a licensed funeral director or licensed mortician. In addition, 24.147.302 (9 & 11) defines funeral services and funeral providers as requiring a mortician's license and mortuary license. Also, 24.147.1503 (1) states that the sale of at-need, pre-need, and prepaid funeral arrangements require a duly licensed mortician or funeral director. I feel Mr. Spojka and Mr. Gallagher are putting themselves out to be funeral directors when they act in the capacity of setting up pre-paid cremation services.

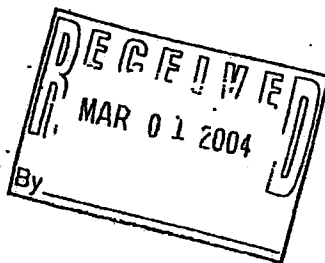
This situation of responsibility at the time of a death is confusing to not only the families who are receiving information from the crematory and being given the impression that everything can be handled by Central Montana Crematorium, Inc. but also to the local hospital and nursing homes.

I feel that the State Board of Funeral Service needs to address this situation and inform Mr. Spojka and Mr. Gallagher of what an independent crematory can and cannot do.

I appreciate your attention to this matter. Thank you.

Sincerely,

*James E. Harris*  
James E. Harris  
enclosures





RECEIVED

MAR 31 2004

By

STATE OF MONTANA  
DEPARTMENT OF LABOR & INDUSTRY  
BUSINESS STANDARDS DIVISION  
301 SOUTH PARK, 4<sup>TH</sup> FLOOR  
PO BOX 200513  
HELENA, MONTANA 59620-0513  
(406) 841-2300

FOR OFFICE USE ONLY

Complaint # 2004-10-FNR

Please print, type, or use computer to complete form. BOARD NAME:

COMPLAINT AGAINST: William A. Spojka & Allen C. Gallagher, Sr. LICENSE # \_\_\_\_\_ (If Known)

PROFESSION/OCCUPATION TYPE: Crematory

BUSINESS/FIRM NAME: Central Montana Crematorium PHONE # 538-4400

ADDRESS: 100 Cattail Drive Lewistown, MT 59457  
Street or PO Box City/State Zip Code

NATURE OF COMPLAINT: Please describe in detail the nature of the complaint, giving dates and other information. If service is part of the complaint, give information about telephone calls, contracts, etc. Attach additional sheet if necessary.

Above named business advertizes "Direct Cremation" in the Lewistown News Argus and if requested sends out prices for their services. My complaint is the removal of a pacemaker by them and also viewing at the crematory. MCA 37-19-101 Definitions (28) (a) ..... suitable room for viewing. A crematory does not have to have a room for viewing to obtain a license.

LIST OF WITNESSES AND EVIDENCE: See attached copy of ad and price list from Central Montana Crematorium.

WHAT ACTION ARE YOU REQUESTING OF THE BOARD OR DEPARTMENT? I am requesting tha the board inform the above named business that they cannot perform these activities and take whatever other action is necessary or needed.

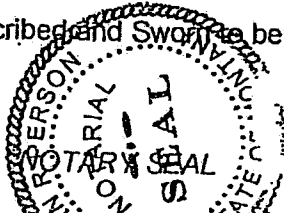
COMPLAINANT'S NAME: Richard J. Brown PHONE#: 538-8711  
Print Here

COMPLAINANT'S ADDRESS: P.O. Box 595 Lewistown, MT 59457  
Street or PO Box City/State Zip Code

I hereby release the licensee in question from the bond of confidentiality in this matter. The facts and matters contained herein are true, accurate and correct to the best of my knowledge. Complaint form must be signed and notarized.

COMPLAINANT'S SIGNATURE: [Signature] DATE: 03-30-04

Subscribed and Sworn to before me the 30th day of March, 2004



[Signature]  
Notary Public for the State of Montana  
Residing at Lewistown  
My Commission Expires 3-17-06

# Central Montana Crematorium, Inc.



This information comes from our current General Price List  
To guarantee costs, visit our office from 1-3 any week day.

Basic Professional Fee	\$995.00
(Includes service of staff overhead and all required paper work such as death certificate, VA and social security reports, cremation container and final cremation)	
Removal of the Deceased within 130 mile radius of Lewistown	No charge
(Not 65 mile after the 130 mile radius)	
Sheltering of body including refrigeration	No charge
Printing of folders for memorial service	No charge
Unsuitable casket	No charge
(More expensive urns are available but not recommended)	

## TOTAL PRICE FOR BASIC CREMATION \$995.00

Additional charge for removal of pacemaker or other hazardous implant	\$75.00
Mailing (overnight to authorized persons)	\$30.00

To guarantee your price, you may set up a Certificate of Deposit for your basic cremation cost at your bank, payable to the Crematorium and call and schedule your service. The money remains yours and you get the interest from the CD. To terminate our contract, you only need to remove the money from the CD. Your CD is completely redeemable for Medicaid purposes.

We never try to get you to spend more to enhance our profit.  
We will encourage you not to spend more than necessary.

To use our services, just call us at 538-4400  
and we will do everything from there.

Please 192CR1  
Telephone: (406) 538-4400 - Lewistown, Montana 59457  
**NO MORTICIAN IS REQUIRED**



Governor Judy Martz

*Montana*

**Department of Labor and Industry**

Business Standards Division

RECEIVED CORRECT COPY OF ORIGINAL  
OF THESE RECORDS, STATE OF MONTANA

*Cristina Medina*

BY: CUSTODIAN OF RECORDS

**Report of Investigation**

of a complaint received by

**The Board of Funeral Services**

**Case Number:**

04-007-FNR  
04-008-FNR

**Supervising Attorney:**

Lon Mitchell

**Investigator:**

Bruce A. Duenkler

**Complainant:**

James E. Harris  
Creel Funeral Home  
PO Box 991  
Lewistown MT 59457

**Respondent:**

William A. Spoja 04-007-FNR  
Central Montana Crematorium, Inc.  
PO Box 882  
Lewistown MT 59457

Allen Gallagher, Sr. 04-008-FNR  
415 Boyd  
Lewistown MT 59457

**Status of Investigation:**

Complete

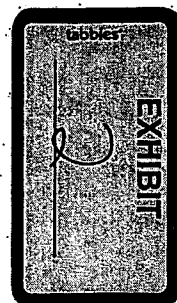
**Date of Report:**

July 12, 2004

**SUMMARY OF COMPLAINTS**

On March 1, 2004, James Harris filed complaints against William Spoja and Allen Gallagher with the Board of Funeral Services (Board). Harris alleges that Spoja and Gallagher are providing at-need funeral arrangements, pre-need funeral arrangements and pre-need funeral agreements without being properly licensed as a mortician or funeral director. Harris described the death of an individual in

P.O. BOX 200513 • 301 SOUTH PARK • HELENA MT 59620-0513 • PHONE (406) 841-2300  
FAX (406) 841-2323 • TTD (406) 444-0532  
"AN EQUAL OPPORTUNITY EMPLOYER"



Lewistown in which he alleges these violations took place. A copy of the complaints is provided in Attachment 1.

### **SUMMARY OF LICENSEE WRITTEN RESPONSE**

William Spoja is an attorney practicing in Lewistown. He submitted a written response on behalf of himself and Allen Gallagher, Sr. He and Gallagher are both licensed as crematorium operators.

Spoja said they do not offer funeral services, funeral arranging, or funeral directing. He said they do take pre-need cremation authorizations under Section 37-19-708 MCS. He said they do not take advance payments of any kind. He explained that they do, however, explain to people that they may have a Certificate of Deposit set up at their bank by which Central Montana Crematorium would be paid upon their death. Spoja believes no regulations were violated in the course of services offered upon the death of the individual as described in the complaint filed by Harris. A copy of the response is provided in Attachment 2.

### **SUMMARY OF EVIDENCE**

William Spoja and Allen Gallagher, Sr. do accept pre-need authorization for cremation. They also accept payment from bank Certificates of Deposit made payable to Central Montana Crematorium upon the death of the account holder. They also offer transportation services from the place of death to the crematorium. They may be in violation of the following regulations:

Section 24.147.1503(1) MCA, "No person, firm or corporation shall sell or offer to sell, or make or offer to make at-need funeral arrangements, pre-need funeral arrangements or prepaid funeral agreements, unless that person is a duly licensed mortician or funeral director."

### **DETAILS OF THE INVESTIGATION**

**ASSIGNMENT OF INVESTIGATION:** June 28, 2004

In the complaint Harris stated that he removed the body of Noble Murray from the Central Montana Skilled Nursing Center on December 17, 2003. He took it to his funeral home and contacted the immediate family. He said he met with them and was told of the prepayment arrangements made Central Montana Crematorium. Harris said he contacted Gallagher and requested that the crematorium pay him.

\$475.00 to cover expenses owed to him by the family for his services. The crematorium issued Harris a check the same day.

Records obtained from Allen Gallagher indicate that Central Montana Crematorium did enter into an Agreement for Cremation Services for Noble Murray on October 16, 2003. Copies of the Agreement and Authorization for Cremation and Disposition are included in Attachment 3.

Spoja also sent additional records on March 22, 2004. It is a copy of information that Central Montana Crematorium gives to persons interested in their services. It indicates that they offer removal of the body, cremation, and preparation of the Death Certificate. The document is included in Attachment 3.

The family of the deceased also sent a letter to the Board on March 23, 2004. They describe the arrangements they made for Noble Murray. In item #5 they stated that prior to Murray's death they had informed Jim Harris that he would not be taking care of Murray's body. A copy of the letter is included in Attachment 4.

In a previous letter from the family dated January 8, 2004, and included with the response in Attachment 2, they stated that when they met with Harris after he had removed the body, Harris told them that he was the only one who could pick up the body and that you must be a licensed mortician to be able to do this and that the crematorium could not do it.

Jim Harris has also provided additional material. On July 8, 2004, he sent a letter, two cassette tapes, and a copy of a letter to the people of central Montana published by Central Montana Crematorium in the Lewistown News Argus. One cassette tape is of local radio advertisements run by Central Montana Crematorium and the other is a half hour radio interview with Spoja and Gallagher. The documents are included in Attachment 5 and the tapes are available for listening by the Screening Panel if needed.

I have listened to both tapes. The advertisements indicate that the crematorium is offering "direct personal crematorium services with no other commitments required." They explain that the public has choices "including the final choice for your beloved family members." The public is encouraged to learn more about choices they have by calling the crematorium.

In his letter of July 7, 2004, (Attachment 5) Harris is concerned that Spoja stated in the radio interview that cremations are being sent out town, but the families believe their loved ones are being cremated in Lewistown. On the tape Spoja stated that he "suspects a lot of people are convinced bodies are being cremated in Lewistown" and they "don't realize they are being sent elsewhere." Harris stated in his letter that this is not true. He said the cremation authorization



clearly states the name of the crematory being used and that some families request Central Montana Crematorium not be used.

On the tape Spoja and Gallagher both repeatedly state that they do not offer any funeral services. Gallagher did state that they have a chapel available at no charges for services if the family wishes to use it, but that they do not provide or charge for any funeral service. He said there is a refrigeration area to store the body for 24 hours before cremation can take place. Gallagher said there is no funeral viewing, but there is a viewing area where the family may observe the cremation process.

During the radio interview Gallagher explained that they now offer direct cremations and that it is not necessary to use a funeral home to make those arrangements. He also explained that there are ways to make advanced arrangements for cremation.

Harris also provided a copy of the funeral home charges for goods and services and the hospital release form. Harris notified me on July 12, 2004, that he did not require the family to pay the balance due on the account. The documents are included in Attachment 5.

#### INTERVIEW WITH WILLIAM SPOJA

I interviewed Spoja by telephone on July 2 and 12, 2004. He said Murray had contacted them while he was in the nursing home and made arrangements for direct cremation. Spoja said this service includes removal of the body from the place of death. Spoja said he did not have any documentation that specifically indicated that Murray had directed Central Montana Crematorium to remove the body.

Spoja said he did not believe that the funeral home had any written instructions from Murray or his family directing the funeral home to be in charge of the removal of the body. Spoja said he has notified the nursing homes and hospitals in the area that the crematorium is to be notified for removal of the body if the family has made arrangements for direct cremation.

#### ATTACHMENTS

1. Copy of complaints from James Harris
2. Copy of response from William Spoja
3. Supplemental documents provided by Gallagher and Spoja
4. Letter from family of Noble Murray
5. Supplemental documents provided by James Harris



STATE OF MONTANA  
DEPARTMENT OF LABOR & INDUSTRY  
BUSINESS STANDARDS DIVISION  
301 SOUTH PARK, 4<sup>TH</sup> FLOOR  
PO BOX 200513  
HELENA, MONTANA 59620-0513  
(406) 841-2300

RECEIVED  
MAR 01 2004

FOR OFFICE USE ONLY

Complaint # 2004-7-FNR

Please print, type, or use computer to complete form. BOARD NAME: FUNERAL SERVICE

COMPLAINT AGAINST: William A. Spoja, Jr. LICENSE # 749  
(If Known)

PROFESSION/OCCUPATION TYPE: Crematory Operator

BUSINESS/FIRM NAME: Central Montana Crematorium, Inc. PHONE # 406-538-4400

ADDRESS: PO Box 882 100 Cattail Drive Lewistown, MT 59457  
Street or PO Box City/State Zip Code

NATURE OF COMPLAINT: Please describe in detail the nature of the complaint, giving dates and other information. If service is part of the complaint, give information about telephone calls, contracts, etc. Attach additional sheet if necessary.  
Please see attached letter and documents

LIST OF WITNESSES AND EVIDENCE:

WHAT ACTION ARE YOU REQUESTING OF THE BOARD OR DEPARTMENT?

To inform Mr. Spoja of what duties he can and cannot perform  
as a crematory operator, especially relating to pre-arrangements or  
pre-paid services.

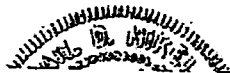
COMPLAINANT'S NAME: James E. Harris PHONE#: 406-538-8755  
Print Here

COMPLAINANT'S ADDRESS: PO Box 991 Lewistown, MT 59457  
Street or PO Box City/State Zip Code

I hereby release the licensee in question from the bond of confidentiality in this matter. The facts and matters contained herein are true, accurate and correct to the best of my knowledge. Complaint form must be signed and notarized.

COMPLAINANT'S SIGNATURE: James E. Harris DATE: 2/26/04

Subscribed and Sworn to before me the 26<sup>th</sup> day of February, 2004



Gail D. Hibel  
Notary Public for the State of Montana  
Residing at Christina  
My Commission Expires 2-1-2008

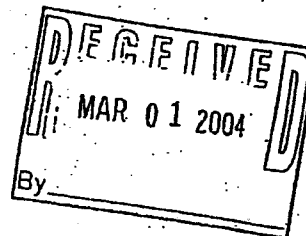
ATTACHMENT 1



James E. Harris, President

February 23, 2004

State of Montana  
Department of Labor & Industry  
301 South Park, 4<sup>th</sup> Floor  
P.O. Box 200513  
Helena, MT 59620-0513



Re: Services for Noble Murray, deceased and Central Montana Crematorium, Inc.

The reason for my contacting you is a concern regarding the practices and procedures followed by the new Central Montana Crematorium, Inc. in Lewistown. While I have been contracting with their services for cremation since their opening in October, and things have gone smoothly thus far, I am concerned regarding a recent experience.

On December 17, 2003 at 5:40 a.m., I received a call from the Central Montana Skilled Nursing Center regarding a Mr. Noble Murray who had passed away and that my services were needed. (Noble had pre-arranged his funeral with me (Creel Funeral Home) in July 2002 and as late as October 2003 had visited with me about requested obituary revisions). He was quoted costs and I also informed him about veteran's benefits that would be available to him. He did not wish to prepay at that time but did provide veteran's papers and obituary information for his pre-need file and requested cremation with inurnment at Fort Harrison at the time of his death. Upon his death on December 17, I made the removal and contacted his immediate family, a sister, Jean Trammell-Wallace. She and her son came in to make the arrangements. It was the usual arrangement conference until I started going over the Contract for Goods and Services with her. She told me that all monies were pre-paid to the Central Montana Crematorium, Inc. and was told by their manager that both local funeral homes were affiliated with them. I told her that this was not true-that I use CMCI as an independent crematory and give families an option as to what crematory they desire to use. I emphasized that Creel Funeral Home is not affiliated whatsoever with Central Montana Crematorium, Inc.

I phoned CMCI, and Al Gallagher, manager, informed me that \$675.00 had been set up for Noble Murray's necessary total expenses. He asked how this could be handled; I requested a check for \$475.00 to credit the family towards my services and that he would have to talk to Bill Spoja, the owner of the crematorium; his direct boss. Bill phoned me, and asked why I should receive \$475.00 of the \$675.00. I told him that I had made the removal, had met with the family, and had done all of the normal procedures

during an arrangement conference and had readied Mr. Murray to bring to the crematory. I am enclosing a copy of his check and also a copy of his advertisement as it appears in the local Lewistown News Argus.

I feel he is in violation of 24.147.302 (5) as pre-arrangements or pre-paid services should be made with a licensed funeral director or licensed mortician. In addition, 24.147.302 (9 & 11) defines funeral services and funeral providers as requiring a mortician's license and mortuary license. Also, 24.147.1503 (1) states that the sale of at-need, pre-need, and prepaid funeral arrangements require a duly licensed mortician or funeral director. I feel Mr. Spoja and Mr. Gallagher are putting themselves out to be funeral directors when they act in the capacity of setting up pre-paid cremation services.

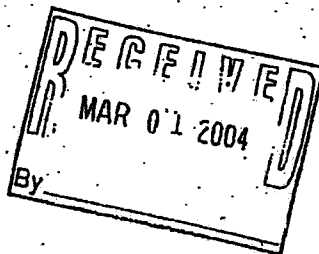
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I feel that the State Board of Funeral Service needs to address this situation and inform Mr. Spoja and Mr. Gallagher of what an independent crematory can and cannot do.

I appreciate your attention to this matter. Thank you.

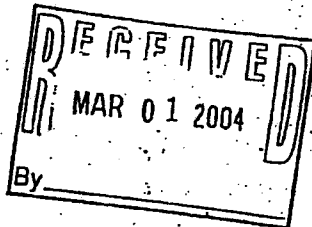
Sincerely,

*James E. Harris*  
James E. Harris  
enclosures



2A Lewistown News-Armys Wednesday, February 25, 2004

CENTRAL MONTANA CREMATORIUM, INC.  
Allen Gallagher, Sr., Manager  
Direct Cremations  
For information call (406) 538-4400





STATE OF MONTANA  
DEPARTMENT OF LABOR & INDUSTRY  
BUSINESS STANDARDS DIVISION  
301 SOUTH PARK, 4<sup>TH</sup> FLOOR  
PO BOX 200513  
HELENA, MONTANA 59620-0513  
(406) 841-2300

DEFINER

MAR 01 2004

FOR OFFICE USE ONLY

Complaint # 2004-8-FNR

Please print, type, or use computer to complete form. BOARD NAME: FUNERAL SERVICE

COMPLAINT AGAINST: Allen Gallagher, Sr. LICENSE # 748  
PROFESSION/OCCUPATION TYPE: Crematory Technician operator (If Known)  
BUSINESS/FIRM NAME: Central Montana Crematorium, Inc. PHONE # 406-538-4400  
ADDRESS: PO Box 882 100 Cattail Drive Lewistown, MT 59457  
Street or PO Box City/State Zip Code

NATURE OF COMPLAINT: *Please describe in detail the nature of the complaint, giving dates and other information. If service is part of the complaint, give information about telephone calls, contracts, etc. Attach additional sheet if necessary.*  
Please see attached letter and documents

LIST OF WITNESSES AND EVIDENCE:

WHAT ACTION ARE YOU REQUESTING OF THE BOARD OR DEPARTMENT?

To inform Mr. Gallagher of what duties he can and cannot perform as  
a crematory technician, especially relating to pre-arrangements or  
pre-paid services.

COMPLAINANT'S NAME: James E. Harris PHONE #: 406-538-8755  
Print Here

COMPLAINANT'S ADDRESS: PO Box 991 Lewistown, MT 59457  
Street or PO Box City/State Zip Code

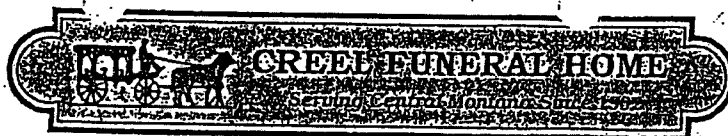
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COMPLAINANT'S SIGNATURE: James E. Harris DATE: 2/26/04

Subscribed and Sworn to before me the 26<sup>th</sup> day of February, 2004



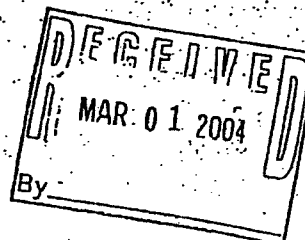
Paul D. Nibel  
Notary Public for the State of Montana  
Residing at Helena, MT  
My Commission Expires 2-1-2008



James E. Harris, President

February 23, 2004

State of Montana  
Department of Labor & Industry  
301 South Park, 4<sup>th</sup> Floor  
P.O. Box 200513  
Helena, MT 59620-0513



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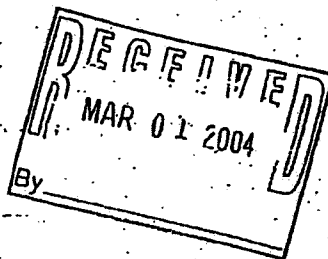
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Sincerely,

*James E. Harris*

James E. Harris  
enclosures





2A

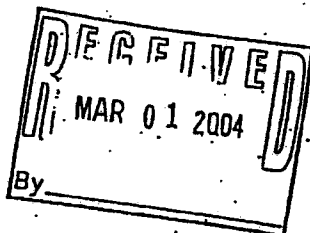
Lewistown News-Argus Wednesday, February 25, 2004

CENTRAL MONTANA CREMATORIUM, INC.

Allen Gallagher, Sr., Manager

Direct Cremations

For information call (406) 538-4400



CENTRAL MONTANA CREMATORIUM INC.  
PO BOX 882  
LEWISTOWN, MT 59457

1027

93-7085/2029

12-17-03

Pay to the  
Order of

*Cecil Funeral Home* \$ 475 -  
*Four hundred seventy five and 00/100 dollars*



WESTERN  
SECURITY  
BANK  
P.O. Box 20027 • 509-493-5627  
Billings, MT 59104

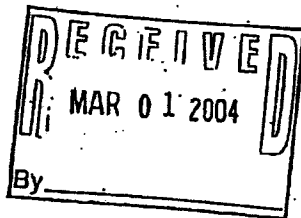
Form No.  
10-10-01

*Murray*

*William Lopez*

⑆292970854⑆

1027



*Central Montana Crematorium Inc.*  
*100 Cattail Drive P.O. box 882*  
*Lewistown, Montana. 59457*

Phone # (406) 538-4400 Fax# (406) 538-4401

*To: Creel Funeral Home*

*Due to the cost involved in are operation we will have to raise our rates for cremations  
done at our Crematory.*

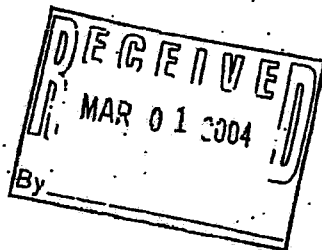
*The cost will be \$450.00 per Cremation starting the 1<sup>st</sup> of January 2004. All other cost  
Will remain the same.*

*Pace maker removal \$25.00*

*Container \$13.95*

*Thank you for your business.*

*Allen C Gallagher*  
*Allen c gallagher*



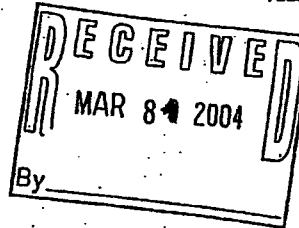
WILLIAM A. SPOJA, JR.

*Attorney at Law*

THIRD AND BROADWAY  
P.O. BOX 882  
LEWISTOWN, MONTANA 59457  
TELEPHONE (406) 538-8767  
FAX (406) 538-5861

March 3, 2004

Department of Labor and Industry  
State of Montana  
P. O. Box 200513  
Helena, MT 59620-0513



Re: Complaint #FNR-2004-7, Central Montana Crematorium, Inc..

This is in response to your letter of March 2, 2004 in reference to the complaint by James Harris, owner of Great Funeral Home.

1. We hereby waive any right to privacy which we might have in this matter and ask that the entire matter be conducted in a fully public forum. We do not believe we have violated any law or regulation nor have we violated the rights of any person or persons. To be accused of such by Mr. Harris disturbs us greatly.

Our organization operates under the following formally adopted corporate policy:

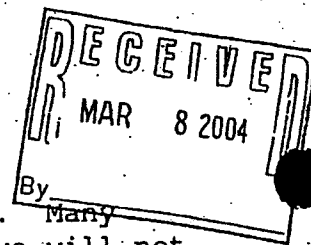
Our commitment to the people of Central Montana is that we will offer the best services we can. We will respect the persons involved, both deceased and surviving, as well as the faith tradition they have chosen to follow. We pledge to do this at a reasonable price, never encouraging anyone to spend beyond their means and making certain that everyone who needs our services is able to have them.

We understand that some persons do not prefer cremation; we respect that most personal of decisions and encourage people to follow their own wishes. It is our intention to cooperate in every reasonable way with our local funeral homes.

We promise to hear you and your suggestions. We hope our services are always appropriate to your needs.

2. Under no circumstances does Central Montana Crematorium, Inc. do funeral services, funeral arranging or funeral directing. Some time ago, the attorney for the Board of Funeral Services indicated in a letter to us that the board did not see how we could operate without doing funeral services. We wrote him an extensive answer to that suggestion and have heard nothing further.

**ATTACHMENT 2**



3. We do not take advance payments of any kind. <sup>Many</sup> people want to make advance payment to us; we will not accept such payment. We do, however, explain to them that they may have a Certificate of Deposit set up at their bank by which we would be paid upon their death. We make certain, however, that they understand that their CD is under their own sole control and that should they elect to remove the funds, they may do so without any penalty from us.
4. We do take pre-need cremation authorizations under §37-19-708, M.C.A. We believe that all that we do under this provision of the statutes is appropriate. We doubt if any board has taken or can take any action to abrogate that provision.
5. We have sent our people to one of the largest crematoriums in California for training. They have done dozens of cremations themselves since we opened.  
  
We have sought the guidance of the regulatory agencies relative to our business. Since our business is so new and is a stand-alone crematorium, often it is difficult for the agencies to give us the guidance we need. For this reason, we have ourselves researched every aspect of our business with great care and make every effort to avoid any illegal or improper activity. We established the business because we were certain it could operate as it does.
6. Mr. Harris acted quite strangely in connection with the Noble Murray matter. Although we believe his actions were inappropriate, we believe we understand why he did what he did.

Here, in a nutshell, is what happened at the death of Mr. Murray:

Harris (Creel's) was told by Mr. Murray's family that he and they wanted direct cremation. It is my understanding that well prior to his death, Mr. Murray or his representative informed Harris that he, Murray, wanted direct cremation and planned to use Central Montana Crematorium, not a funeral home. Nonetheless,

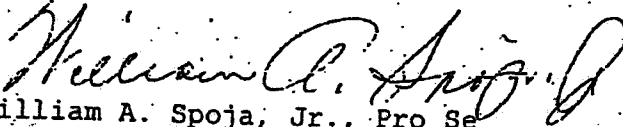
Page 3, re: Complaint #2004-7

when called by the hospital at Murray's death, Harris apparently told the hospital that only he or another mortician could remove the body. Once he obtained the body, he refused to release it unless he was paid by us, demanding all but our regular wholesale cremation sum.

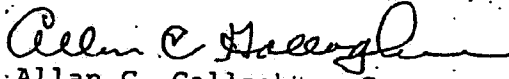
Rather than embarrassing the family and adding to their problems at the time, we simply acquiesced in his demand and paid him the money he demanded. (The funds came from the crematorium operating funds; only later was the Murray CD, payable on death, paid to the crematorium.) As a result of this matter, we went to the Board of Funeral Service to have the rules clarified notwithstanding the fact that we believed (and believe even more strongly now) that our crematorium personnel may remove bodies to the crematorium. See the accompanying Memorandum to the Board of Funeral Service. Please note particularly the attached letter from Noble Murray's family.

Please let us know when the screening panel discussion will be held. We will wish to attend at every step of this process.

Sincerely,

  
William A. Spojka, Jr., Pro Se

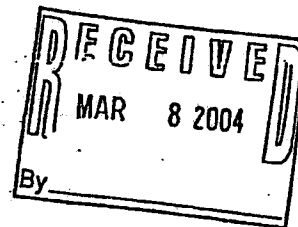
President of CMC, Inc.

  
Allan C. Gallagher, Crematory  
Operator License #748;

Manager of CMC, Inc.

WAS.s

- Enc: 1) Petition for Declaratory Ruling  
2) Memorandum, Funeral Board re: Declaratory Ruling  
3) Response to Petition to Funeral Board  
4) CMC, Inc., Reply to Funeral Board Counsel



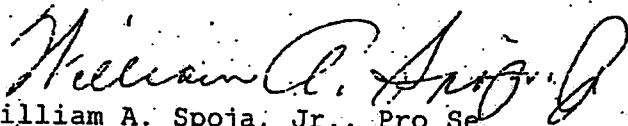
Page 3, re: Complaint #2004-7

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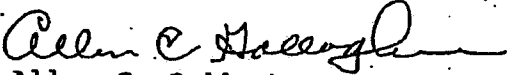
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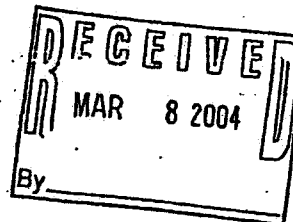
President of CMC, Inc.

  
Allan C. Gallagher, Crematory  
Operator License #748;

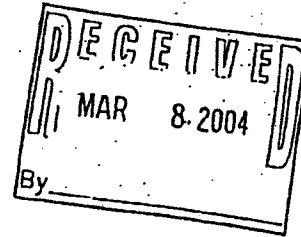
Manager of CMC, Inc.

WAS.s

- Enc: 1) Petition for Declaratory Ruling  
2) Memorandum, Funeral Board re: Declaratory Ruling  
3) Response to Petition to Funeral Board  
4) CMC, Inc., Reply to Funeral Board Counsel



William A. Spoja, Jr.  
Attorney for Central Montana  
Crematorium, Inc.  
P. O. Box 882  
Lewistown, MT 59457  
(405) 538-8767



Attorney for the Petitioner

BEFORE THE BOARD OF FUNERAL SERVICE  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

PETITION FOR DECLARATORY RULING

TO: The Board of Funeral Service

1. Pursuant to Section 2-4-501 et seq. as well the applicable Administrative Rules of Montana, CENTRAL MONTANA CREMATORIUM, INC. requests a declaratory rule as to the following:

WHETHER after the permit for removal of a dead body is granted as required under the terms of section 50-15-405 MCA., any provision of Montana Law or of the Administrative Rules of Montana prevents a crematorium not licensed as a mortuary or for funeral directing from doing the following:

- (1) removing a dead body to the crematorium pursuant to section 50-15-405 (4) MCA;
- (2) cremating the remains; and,
- (3) returning said cremated remains to the duly authorized persons.

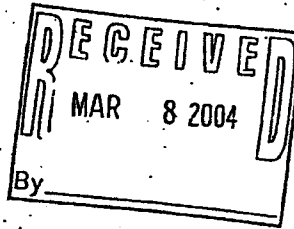
2. Further, until the declaratory ruling sought hereunder is made, Petitioner requests that a temporary order be granted to Central Montana Crematorium, Inc. allowing the actions which would be permitted under the Declaratory Ruling sought herein.

Dated this 9<sup>th</sup> day of January, 2004.

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\_\_\_\_\_  
William A. Spoja, Jr., Counsel  
Charles Thomas, Co-Counsel  
Central Montana Crematorium, Inc.



William A. Spoja, Jr., Esq.  
Attorney for the Central Montana  
Crematorium, Inc. (the petitioner)  
P. O. Box 882  
Lewistown, MT 59457  
(406) 538-8767



BEFORE THE BOARD OF FUNERAL SERVICE  
DEPARTMENT OF LABOR  
STATE OF MONTANA

MEMORANDUM IN SUPPORT OF PETITION  
FOR DECLARATORY RULING

The petitioner brings the accompanying petition for a declaratory ruling pursuant to MCA § 2-4-501 ("Declaratory rulings by agencies"), which provides:

Each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision or of any rule or order of the agency. A copy of a declaratory ruling must be filed with the secretary of state for publication in the register. A declaratory ruling or the refusal to issue such a ruling shall be subject to judicial review in the same manner as decisions or orders in contested cases.

The facts giving rise to the petition are as follows:

In December of 2003, Mrs. Jean Trammell, the authorizing agent as defined by MCA § 37-19-101(3), wanted the petitioner to cremate the body of her late brother, Noble Murray, who had asked with her concurrence that his body be cremated and the ashes returned by the petitioner to Mrs. Trammell. Before the petitioner could move the body to its crematorium, however, Mr. Jim Harris of the Creel Funeral Home was contacted by the hospital, a public institution, without inquiring as to the wishes of the known surviving sister. Creel removed the body, despite having no contractual relationship with the decedent or his next of kin. The next day Creel contacted Mrs. Trammell and insisted that only a licensed mortician could transport the body to the crematorium. He further insisted that the ashes had to be returned to him rather than to Mrs. Trammell. Thus pressed by Mr. Harris, Mrs. Trammell permitted him to

4.1500  
transport the body and executed a contract prepared by him. The Creel Funeral Home then refused to transport the body until the petitioner paid \$450 in advance for ferrying the body to the crematorium. In all, according to the attached letter written by Michael Trammell, the Creel Funeral Home charged Mrs. Trammell \$1,700 for "delivery and handling of the body." See letter of January 8, 2004, attached hereto as Exhibit A; see also Affidavit of Allen C. Gallagher, Sr., also attached hereto.

It is obvious from the Trammells' letter that they believe they were therefore denied any freedom of choice of rights in the care of the remains of the decedent.

Clearly, the authority and directions of Mrs. Trammell should have governed in this case.

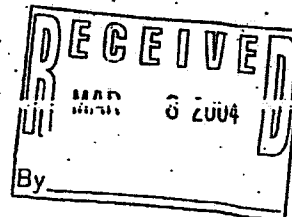
1.

THE APPLICABLE STATUTES AND REGULATION ON FACE PERMITS THE PETITIONER TO REMOVE A DEAD BODY TO ITS CREMATORIUM WITHOUT THE INVOLVEMENT OF A MORTICIAN OR FUNERAL DIRECTOR.

Section 50-15-405 of the Montana Code Annotated governs the removal, transportation, and final disposition of a dead body (emphases added):

(1) Except as provided in subsection (2), *a dead body may be removed from the place of death only upon the written authorization or oral authorization, which must be reduced to writing within 24 hours, of the physician in attendance at death or the physician's designee, the advanced practice registered nurse in attendance at death, the coroner having jurisdiction, or a mortician licensed under 37-19-302.*

(2) If the death requires inquiry under 45-19-302, the written authorization may only be granted by the coroner having jurisdiction or the coroner's designee or by the state medical examiner if the coroner fails to act. However, when the only reason for inquiry under 46-4-122 is that the body is to be cremated, the coroner may grant oral



authorization for cremation of the body, which must be reduced to writing as specified under subsection (1) by the coroner.

(3) The written authorization to move a dead body or, when applicable, to cremate a dead body must be made in quadruplicate on a form provided by the department. The person in charge of disposition of the dead body, the coroner having jurisdiction, and the local registrar must each be provided with and retain a copy of the authorization. A fourth copy may accompany the body to final disposition, as necessary.

(4) *A written authorization issued under this section permits removal, transportation, and final disposition of a dead body.*

Section 15-50-101 (11), MCA states "Person in charge of disposition of a dead body" means a person who places or causes a dead body or the ashes after cremation to be placed in a grave, vault, urn, or other receptacle or otherwise disposes of the body or fetus and who is a funeral director licensed under Title 37 chapter 19, an employee acting for a funeral director, or a person who first assumes custody of a dead body or fetus.

Section 37.116.101, ARM contains the following definition: "Private conveyor" means any entity other than a common carrier that transports a dead human body, *including but not limited to*, a mortuary or an ambulance service.

The statutes and regulation set out above unambiguously and without qualification permit the petitioner to remove and transport a dead body to the place of "final disposition." Indeed, they do not prevent a licensed crematorium or its licensed technicians from removing and transporting such a body, so long as that person has obtained authorization from any of the persons listed in subsection 1 and is a person who first assumes custody of a dead body or fetus. The fact that a licensed mortician is listed among the five categories of persons empowered by the legislature in section 50-15-405, MCA to grant authorization to remove and transport a dead body confers no special or exclusive authority on morticians to grant or concur in granting authorization or reserving to themselves the business of removing and transporting dead bodies. The legislature under 15-50-101 (11) makes it clear that, in fact, that persons other than a funeral director may first assume custody of a dead body or fetus. This board's own regulation quoted above makes it clear that those transporting a dead human body may be persons other than a mortuary or ambulance service.

Creel's audacious insistence not only caused Mrs. Trammell and her family to incur needless added expense, it complicated matters for them and added to her and her family's emotional distress.

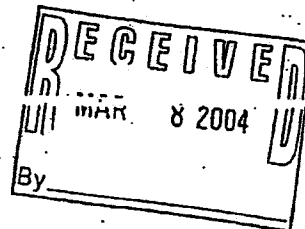
Certainly it is important that the public have a real choice, that its choice be not confused, complicated, or even nullified as a practical matter by misunderstanding of the law or willful misstatements of the law governing the removal and transportation of dead bodies for final disposition. Although the petitioner believes that the law is clear as already written, that MCA § 50-15-405 is straightforward, at least one Lewistown mortician believes otherwise and has already interposed itself between the petitioner and one of its customers. Such interference with petitioner's business relationships and with the wishes of its customers threatens to continue.

## II.

THE BOARD OF FUNERAL SERVICE HAS PROMULGATED A RULE AFFIRMING NEXT-OF-KIN FREEDOM OF CHOICE WHICH IS CONSISTENT WITH THE PETITIONER'S REQUEST FOR A DECLARATORY RULING.

As if to underscore the petitioner's reading of MCA § 50-15-405 to allow a licensed crematorium to remove and transport the deceased for final disposition, the Board of Funeral Service has promulgated rule 24.147.2303, demonstrating its policy and the policy of the State of Montana that the next of kin and family of a deceased person are to have the utmost freedom to choose how to deal with the remains. The rule states (emphases added):

(1) No public officer or employee, or the official of any public institution, or physician or surgeon, or any other person having a professional relationship with any decedent shall send or cause to be sent to any funeral establishment the remains of any deceased person without having first made due inquiry as to the desires of the next of kin and of the person who may be chargeable with the funeral and expenses of such



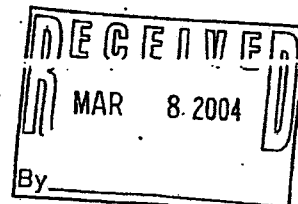
decedent. *And if any such kin be found, his or her authority and directions shall govern.*

(2) No company, corporation or association engaged in the business of paying or providing for the payment of the expenses of the funeral, disposition or other similar expenses of the funeral, disposition or other similar expenses of the deceased members or of certificate holders therein, or engaged in the business of providing any insurance upon the life of any individual, under which contract of insurance any obligation might or could arise to care for the remains of the insured, shall contract to pay or shall pay any such insurance of such benefits, or any part of either such insurance of benefits, to any funeral establishment or to any licensee or to any individual in any manner which might or could deprive the individual in any manner which might or could deprive the representative, next of kin or family of such deceased person from, or in [any] way control them in procuring such funeral establishment, person licensed for the practice of funeral service *or other proper and competent person to perform such necessary and proper services, and to furnish supplies as may be necessary and proper to care for the remains of such decedent as such representative, next of kin or family may desire.*

Transparently, Central Montana Crematorium, Inc., being a fully licensed crematorium, would be an "other proper and competent person to perform such necessary and proper services, and to furnish supplies as may be necessary and proper to care for the remains of such decedent as such representative, next of kin or family may desire."

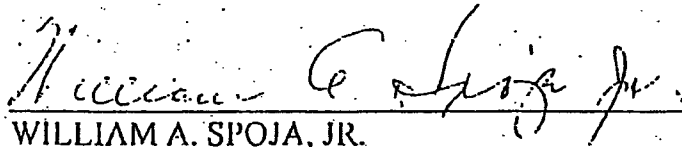
The Creel Funeral Home's representation to Mrs. Trainmell and her family that only a licensed mortician could lawfully convey the body of her brother to the petitioner's crematorium and return the cremated remains to the next of kin flies in the face of the statute. And surely no reasonable person would ask or expect any regulatory body to exceed statutory authority in such a manner.

The boldness to mislead the family of a deceased, a family's understandable tendency to believe a misrepresentation of what the law requires, and the realistic concern that even health-care professionals succumb to like intimidations all argue for the Board of Funeral Service to issue the ruling requested in the petition. It is necessary that it be absolutely clear that a licensed and duly authorized crematorium



may transport the body of a deceased person to its own facility and return the cremated remains to the next of kin or other duly authorized person(s) MCA § 50-15-405.

DATED: January 12, 2004



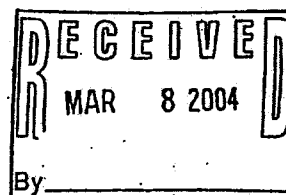
WILLIAM A. SPOJA, JR.

P. O. Box 882

Lewistown, MT 59457

(406) 538-8767

ATTORNEY FOR THE PETITIONER



January 8, 2004

To Whom It May Concern:

I am writing this letter in regards to what happened to me and my mother after the death of my Uncle, Noble Murray, at the Lewistown Medical Center Nursing facility.

We were contacted by Jim Harris of Creel Funeral Home. He asked my mother to stop by and sign some papers. Thinking the papers must be for benefits from the Veterans Administration, we did so.

At that time he presented a document to my mother, Jean Trammell Wallace, which had additional charges of about \$1,700.

When asked about the extra charges, we were told that it was for the delivery and handling of the body. When we told him that my uncle had already decided on using the local crematorium, he told us that he was the only one that could pick up the body and that you have to be a licensed mortician to be able to do this and that the crematorium could not do it.

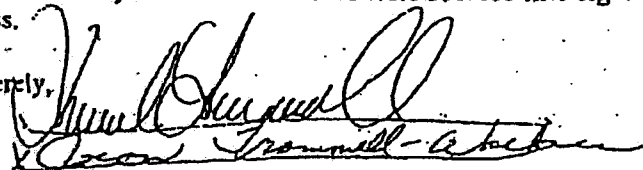
We were told that it was already in process and we had no choice but to sign.

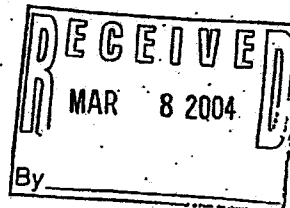
At this point my mother was in shock over the entire matter and just signed as he demanded.

We then went to the hospital and picked up my uncle's things.

We feel that our right as well as my uncle's right to have any choice in this matter had been taken away from us and that we were coerced into signing this document under duress.

Sincerely,

  
Michael Trammell  
For myself and my mother, Jean Trammell  
Hobson, Montana 59452



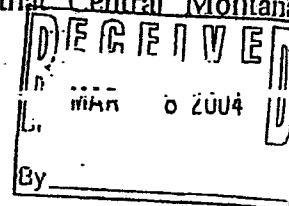
William A. Spoja, Jr., Esq.  
Attorney for the Central Montana  
Crematorium, Inc. (the petitioner)  
P. O. Box 882  
Lewistown, MT 59457  
(406) 538-8767

BEFORE THE BOARD OF FUNERAL SERVICE  
DEPARTMENT OF LABOR  
STATE OF MONTANA

AFFIDAVIT OF ALLEN C. GALLAGHER, SR.

COMES NOW Allen C. Gallagher, Sr., being duly sworn, deposes and says:

1. That he is familiar with the contents of the letter of Michael Trammell and his mother Jean Trammell, which letter is attached to the petition herein and is hereby incorporated in this affidavit by reference;
2. That he was involved intimately with relevant transactions and had contact with both Mrs. Trammell and her son Michael Trammell as well as Creel Funeral Home;
3. That except for not being certain of the exact amount charged by Creel, the remainder of Mrs. Trammell's letter appears to be substantially correct;
4. That Mr. Jim Harris of the Creel Funeral Home informed the undersigned that Central Montana Crematorium, Inc. could not lawfully remove the body of Noble Murray and that Mr. Murray's cremated remains would have to be returned to the Creel Funeral Home;
5. That, despite the fact that no funds had been received by Central Montana Crematorium, Inc., the Creel Funeral Home demanded that Central Montana





Crematorium pay \$475 before Mr. Murray's body would be delivered for cremation;  
and

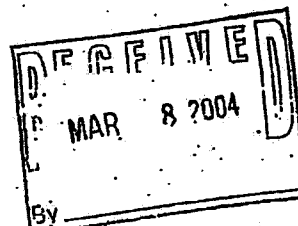
6. That Mrs. Trammell was very upset with the fact that her brother's wishes concerning the disposal of his remains could not be honored.

DATED: January 12, 2004

Allen C. Gallagher, Sr.  
ALLEN C. GALLAGHER, SR.

Subscribed and sworn to before me this 12th day of January, 2004.

Marjorie Green  
Marjorie Green, Notary Public  
State of Montana,  
Residing in Lewistown  
My commission expires 1-12-2006





JUDY MARTZ, GOVERNOR

# Montana

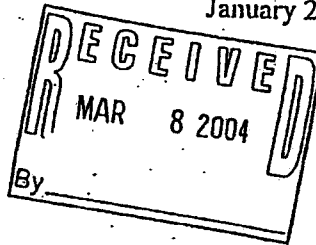
## Department of Labor and Industry

### Office of Legal Services

TELEPHONE: (406) 841-2300  
FAX: (406) 841-2313  
TDD: (406) 444-0532

P.O. BOX 211513  
HELENA, MT 59620-0513

January 21, 2004



*Response from Board*

William A. Spoja, Jr.  
Attorney at Law  
P.O. Box 882  
Lewistown, MT 59457

Re: Central Montana Crematorium, Inc.  
Request for Declaratory Ruling

Dear Mr. Spoja:

On Wednesday, January 21, 2004, the full board of the Board of Funeral Service addressed your request for a declaratory ruling on the question:

"Whether, after obtaining an Authorization for Removal of a Dead Body pursuant to Section 50-15-405, MCA, may a crematorium licensed in the State of Montana (1) remove a dead body and transport it its place of business; and (2) return the remains in a proper container or urn to the next of kin or other duly authorized person as defined by Section 50-15-101(11), MCA."

As you are aware, the Board refused to issue a declaratory ruling because it believes that it is without jurisdiction to control or otherwise regulate the transportation of dead bodies; at least in the initial stages of removing a dead body from a hospital, accident scene or family/nursing home. Jurisdiction lies initially with the Department of Public Health and Human Services (DPHHS) as evidenced by Title 50, Chapter 15, Part 4, MCA.

Once an Authorization for Removal of a Dead Body has been properly executed, there does not appear to be any legal restriction as to whom may transport the body. In fact, the rules of DPHHS provide, or at least contemplate, that transportation of dead bodies may be accomplished by "private conveyor". See ARM 37.116.101(12) and 37.116.103(2)(c). Although the definition of "private conveyor" includes "a mortuary or an ambulance service", it also includes "any entity" without restriction except for common carriers.

Even though the initial transportation of a dead body is not restricted or regulated by the Board, it

William A. Spoja, Jr.

January 21, 2004

Page Two

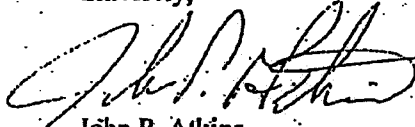
appears that once a dead body arrives at a crematorium, that some type of "funeral directing", as defined by Section 37-19-101(20), MCA, or "funeral services", as defined in ARM 24.147.302(9), would have to be provided. If so, such "directing" and/or "services" can only be provided by a licensed mortician.

Once a dead body has been cremated, the transportation of those remains does not require a permit. Section 37-19-706(5), MCA.

During the Board meeting you stated that your local hospital was reluctant to release dead bodies to anyone other than a licensed mortician. It is the Board's position that a hospital may release dead bodies to any entity as long as an Authorization for Removal of Dead Bodies has been properly executed. This is a DPHHS matter and not one for the Board.

I hope this information will be helpful.

Sincerely,

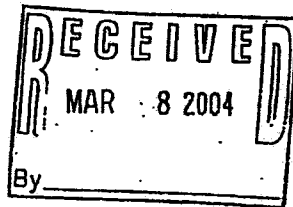


John P. Atkins

Board Counsel

Board of Funeral Service

c. Board of Funeral Service



WILLIAM A. SPOJA, JR.

*Attorney at Law*

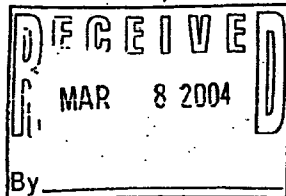
THIRD AND BROADWAY

P.O. BOX 882

LEWISTOWN, MONTANA 59457

TELEPHONE (406) 538-8767

FAX (406) 538-5861



*Our Reply to  
Board Counsel*

Mr. John P. Atkins, Esq.  
Office of Legal Services  
Counsel, Board of Funeral Services  
P. O. Box 200513  
Helena, MT 59620-0513

FAX: (406) 841-2313

Re: Your letter of January 21, 2004

Thank you for your letter relative to the matters addressed before the Board on January 21<sup>st</sup>. To the extent you answered the questions actually asked relative to transportation of dead bodies, your response is helpful and permits the release of the bodies to the crematorium without problem.

I am troubled, however, by your comments in the paragraph which begins on the bottom of page one and continues at the top of page two.

First, we do not do, nor do we intend to do "funeral directing" or "funeral services" as defined in the statutes or the regulation. It is our intention to stay strictly within the authority we have as a crematory.

Second, I am also troubled by your assumption that we would "have to be" providing these services if we bring the body into the crematorium. I do not find such a conclusion being required under the statutes or regs. Am I missing something? How do you come to that conclusion? I recall that the matter was discussed at some length with staff and board at the meeting on the 21<sup>st</sup>. At that time I had the feeling that some were pushing to have me admit that we would have to be doing funeral services or funeral directing after bodies were taken into the crematorium for cremation. That is not so. It was my understanding that we answered those questions on the 21<sup>st</sup>.

In Section 37-19-101 (20) there are a number of things which constitute "funeral directing." We do NONE of these things. Of course, cremated remains can be buried, among other things, but we do not become involved with any of those things. We do not

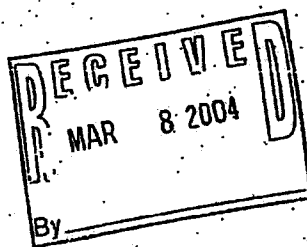
prepare bodies for burial. We do, however, operate fully under our licensure to do cremations.

Although I believe that we do not violate the provisions of 24.107.302 (9) A.R.M. I believe that rule exceeds the legislative authority upon which it is established. At this time, however, I do not see any need to challenge the reg.

Sincerely,

William A. Spoja, Jr.  
Counsel and President  
Central Montana Crematorium, Inc.

WAS:s





Governor Judy Martz

Montana

Department of Labor and Industry

Business Standards Division

March 2, 2004

WILLIAM SPOJA  
P O BOX 1065  
LEWISTOWN MT 59457

Subject: Complaint # FNR-2004-7

Dear Mr. SPOJA:

The enclosed complaint was received in the office of the Board of Funeral Services. The complaint alleges matters, which, if true, may constitute a basis for disciplinary action against your license.

The Screening Panel of the Board requests that you respond to this complaint in writing on or before *March 15, 2004*. In providing your response, please include copies of any written documentation that you believe supports your position, and provide names, address, and telephone numbers of any individuals identified in your response as having knowledge regarding the allegations.

The Screening Panel of the Board will be considering matters related to the above referenced complaint at its meeting of 3/25/2004, to determine whether an investigation is necessary. If an investigation is requested, a department investigator will contact you and give you the opportunity to provide further information. When the investigation is completed, you will be notified of the time and place during which the Screening Panel will consider the report.

You will have the right to attend the meeting, however, your participation will be limited to observing the Screening Panel's deliberations unless asked specific questions by the Screening Panel members. Should the Screening Panel decide to initiate formal action in response to the investigative report, you will receive a formal notice and be provided the opportunity to fully defend your position before an independently appointed hearing examiner.

The presiding officer of the Screening Panel has determined that at this time, the Panel's discussion in this matter relates to a matter of individual privacy, and that the demands of individual privacy clearly exceed the merits of public disclosure. Thus, unless you express an objection, the Screening Panel intends to discuss the above-referenced matter in executive (closed) session to protect your privacy, and that of other persons who may be discussed.

You have the right to waive your right of individual privacy. If you do so, the Screening Panel deliberations may be held in open (public) session. However, the presiding officer of the Screening Panel makes the final determination of whether a complaint is held in open or closed session. If you wish to waive your right of privacy and/or attend the Screening Panel discussion, you must notify the Board office within three business days before the meeting. Please note that if you do choose to attend, your participation will be limited to observing the Screening Panel's deliberations, rather than providing testimony.

Thank you in advance for your assistance and cooperation.

Sincerely,

*Cristina Medina*

Cristina Medina  
Compliance Specialist  
Health Care Licensing Bureau

*Attn - Charles**Fax - (406) 841-2343*

WILLIAM A. SPOJA, JR.

*Attorney at Law*

THIRD AND BROADWAY  
P.O. BOX 882  
LEWISTOWN, MONTANA 59457  
TELEPHONE (406) 538-8767  
FAX (406) 538-5861

March 3, 2004

Department of Labor and Industry  
State of Montana  
P. O. Box 200513  
Helena, MT 59620-0513

Re: Complaint #FNR-2004-008, Central Montana Crematorium, Inc.

This is in response to your letter of March 2, 2004 in reference to this complaint by James Harris, owner of Creel Funeral Home.

1. We hereby waive any right to privacy which we might have in this matter and ask that the entire matter be conducted in a fully public forum. We do not believe we have violated any law or regulation nor have we violated the rights of any person or persons. To be accused of such by Mr. Harris disturbs us greatly.

Our organization operates under the following formally adopted corporate policy:

Our commitment to the people of Central Montana is that we will offer the best services we can. We will respect the persons involved, both deceased and surviving, as well as the faith tradition they have chosen to follow. We pledge to do this at a reasonable price, never encouraging anyone to spend beyond their means and making certain that everyone who needs our services is able to have them.

We understand that some persons do not prefer cremation; we respect that most personal of decisions and encourage people to follow their own wishes. It is our intention to cooperate in every reasonable way with our local funeral homes.

We promise to hear you and your suggestions. We hope our services are always appropriate to your needs.

2. Under no circumstances does Central Montana Crematorium, Inc. do funeral services, funeral arranging or funeral directing. Some time ago, the attorney for the Board of Funeral Services indicated in a letter to us that the board did not see how we could operate without doing funeral services. We wrote him an extensive answer to that suggestion and have heard nothing further.

Page 2, re: Complaint #2004-7

3. We do not take advance payments of any kind. Many people want to make advance payment to us; we will not accept such payment. We do, however, explain to them that they may have a Certificate of Deposit set up at their bank by which we would be paid upon their death. We make certain, however, that they understand that their CD is under their own sole control and that should they elect to remove the funds, they may do so without any penalty from us.
4. We do take pre-need cremation authorizations under §37-19-708, M.C.A. We believe that all that we do under this provision or the statutes is appropriate. We doubt if any board has taken or can take any action to abrogate that provision.
5. We have sent our people to one of the largest crematoriums in California for training. They have done dozens of cremations themselves since we opened.  
  
We have sought the guidance of the regulatory agencies relative to our business. Since our business is so new and is a stand-alone crematorium, often it is difficult for the agencies to give us the guidance we need. For this reason, we have ourselves researched every aspect of our business with great care and make every effort to avoid any illegal or improper activity. We established the business because we were certain it could operate as it does.
6. Mr. Harris acted quite strangely in connection with the Noble Murray matter. Although we believe his actions were inappropriate, we believe we understand why he did what he did.

Here, in a nutshell, is what happened at the death of Mr. Murray:

Harris (Creel's) was told by Mr. Murray's family that he and they wanted direct cremation. It is my understanding that well prior to his death, Mr. Murray or his representative informed Harris that he, Murray, wanted direct cremation and planned to use Central Montana Crematorium, not a funeral home. Nonetheless,



Page 3, re: Complaint #2004-7

when called by the hospital at Murray's death, Harris apparently told the hospital that only he or another mortician could remove the body. Once he obtained the body, he refused to release it unless he was paid by us, demanding all but our regular wholesale cremation sum.

Rather than embarrassing the family and adding to their problems at the time, we simply acquiesced in his demand and paid him the money he demanded. (The funds came from the crematorium operating funds; only later was the Murray CD. payable on death. paid to the crematorium.) As a result of this matter, we went to the Board of Funeral Service to have the rules clarified notwithstanding the fact that we believed (and believe even more strongly now) that our crematorium personnel may remove bodies to the crematorium. See the accompanying Memorandum to the Board of Funeral Service. Please note particularly the attached letter from Noble Murray's family.

Please let us know when the screening panel discussion will be held. We will wish to attend at every step of this process.

Sincerely,

*William A. Spoja, Jr.*  
William A. Spoja, Jr., President

President of CMC, Inc.

*Allan C. Gallagher*  
Allan C. Gallagher, Crematory  
Operator License #748;

Manager of CMC, Inc.

WAS:s

- Enc: 1) Petition for Declaratory Ruling  
2) Memorandum, Funeral Board re: Declaratory Ruling  
3) Response to Petition to Funeral Board  
4) CMC, Inc., Reply to Funeral Board Counsel



Governor Judy Martz

Montana

Department of Labor and Industry

Business Standards Division

March 2, 2004

ALLEN GALLAGHER  
415 BOYD  
LEWISTOWN MT 59457

Subject: Complaint # FNR-2004-8

Dear Mr GALLAGHER:

The enclosed complaint was received in the office of the Board of Funeral Service. The complaint alleges matters, which, if true, may constitute a basis for disciplinary action against your license.

The Screening Panel of the Board requests that you respond to this complaint in writing on or before *March 15, 2004*. In providing your response, please include copies of any written documentation that you believe supports your position, and provide names, address, and telephone numbers of any individuals identified in your response as having knowledge regarding the allegations.

The Screening Panel of the Board will be considering matters related to the above referenced complaint at its meeting of *25/2004*, to determine whether an investigation is necessary. If an investigation is requested, a department investigator will contact you and give you the opportunity to provide further information. When the investigation is completed, you will be notified of the time and place during which the Screening Panel will consider the report.

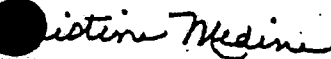
You will have the right to attend the meeting, however, your participation will be limited to observing the Screening Panel's deliberations unless asked specific questions by the Screening Panel members. Should the Screening Panel decide to initiate formal action in response to the investigative report, you will receive a formal notice and be provided the opportunity to fully defend your position before an independently appointed hearing examiner.

The presiding officer of the Screening Panel has determined that at this time, the Panel's discussion in this matter relates to a matter of individual privacy, and that the demands of individual privacy clearly exceed the merits of public disclosure. Thus, unless you express an objection, the Screening Panel intends to discuss the above-referenced matter in executive (closed) session to protect your privacy, and that of other persons who may be discussed.

You have the right to waive your right of individual privacy. If you do so, the Screening Panel deliberations may be held in open (public) session. However, the presiding officer of the Screening Panel makes the final determination of whether a complaint is held in open or closed session. If you wish to waive your right of privacy and/or attend the Screening Panel discussion, you must notify the Board office within three business days before the meeting. Please note that if you do choose to attend, your participation will be limited to observing the Screening Panel's deliberations, rather than providing testimony.

Thank you in advance for your assistance and cooperation.

Sincerely,



Cristina Medina  
Compliance Specialist  
Health Care Licensing Bureau

P.O. BOX 200513 • 301 SOUTH PARK • HELENA MT 59620-0513 • PHONE (406) 841-2300

FAX (406) 841-2343 • TTD (406) 444-0532

"ALL EQUAL OPPORTUNITY EMPLOYER"

Medina, Cristina

From: William Spoja [thumper@lein.net]  
Sent: Monday, March 22, 2004 10:16 AM  
To: cmedina@state.mt.us  
Subject: Additional information re: 2004-007 & 008 FNR

Christina: I am sending along some added information which will assist the Funeral Board in knowing what we set out to do with cases which come to the crematorium. We have tried from the beginning to limit our practice to those actions which we may properly and legally take; I think that this instrument which is to be provided to all persons asking for our service shows what we can and cannot do.

Should the Funeral Board believe that we need to limit our actions beyond what is contained in this instrument, we would welcome their suggestions.

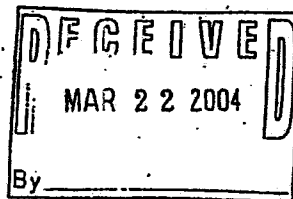
Since we have not yet done a direct cremation, I am still having some problem figuring out what Mr. Harris' problem is, but hopefully we will find out on Thursday.

Sincerely,

William A. Spoja, Jr.

For myself, CMC, Inc. and Allan

Gallagher, Sr.



ATTACHMENT 3

3/22/2004

# Central Montana Crematorium Inc.

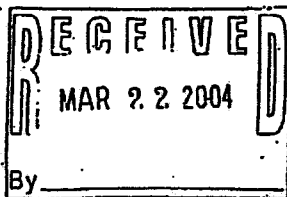
100 Cattail Drive

P.O. Box 882

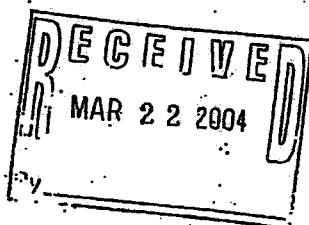
Lewistown, Montana 59457

The following is to give you some basic information relative to the operation of Central Montana Crematorium, Inc.

1. Central Montana Crematorium, Inc. performs only basic Cremations. This generally meets the full needs of those wishing to use the cremation process.
2. Basic Cremation consists of the following:
  - a. Recovery of the body of the deceased from the place of death;
  - b. Delivery to the crematorium for cremation;
  - c. Preparation of proper Authorization for cremation, including obtaining the necessary permits and signatures;
  - d. Cremation and preparation of the cremated remains for delivery to authorizing next of kin or other proper persons;
  - e. Preparation of the Death Certificate as authorized by the Bureau of Vital Statistics for the state.
3. There are some things which the crematorium does not do, either by reason of choice and training, state law or appropriate regulation. Among them are the following:
  - a. Embalming or any preparation of the body for viewing;
  - b. Performance of any form of funeral service or funeral direction or any service normally considered part and parcel of a funeral director's or mortician's duties. We are able and willing to discuss securing the services of clergy or other such matters although we cannot do these things for you since they are considered by the funeral industry to be 'funeral directing.'
4. No moneys are expected to be paid until services are to be rendered. The Crematorium does not hold your funds—you may place them in a Savings Certificate in sufficient amount to pay the costs at the time of need, if you choose to do so. These funds may be made payable upon death to the crematorium; however, they remain under your complete control and may be removed should you need to do so. Under all circumstances we will respect the price you were given when you initially signed the authorization agreement with us.



5. Authorization for cremation can be withdrawn at any time prior to cremation.
6. Most of the services a family will need can be handled by the Family members, friends or your lodge or any association to which you may belong.
7. In the event you or your family wish to have the services of a funeral director, you should always feel free to discuss this matter with either of the local funeral homes. Although we are not associated with either of them, we are willing to cooperate with them in any appropriate way to assure your journey through the time of the death of a loved one is as easy as possible.



40111

Central Montana Crematorium, Inc.  
P.O. Box 882, 100 Cattail Drive, Lewistown, MT 59457  
Telephone: (406)538-4400; Fax (406)538-4401

## Agreement for Cremation Services

NOTHING IN THIS INSTRUMENT SHALL BE CONSTRUED TO BE A FUNERAL  
ARRANGEMENT, OR TO TAKE ANY OTHER ACTION IN VIOLATION OF THE TERMS OF  
24.147.1503 OR THE STATUTES OF THE STATE OF MONTANA.

Date of Agreement: OCT 16, 2003

Name of Decedent: Noble MURRAY Social Security no. [REDACTED]  
Date of Death: \_\_\_\_\_ Cremation I.D. Tag Number: \_\_\_\_\_  
Charges: \_\_\_\_\_

Cremation Container:

Urn:

Other Container:

Cremation Charges:

Mileage: At \_\_\_\_\_ per mile:

Rental of Facilities:

Mailing of Remains ----- (\$ 50.00)

Total Miles: \_\_\_\_\_

Total All Charges

The undersigned authorizes the Central Montana Crematorium, Inc. to provide the above services at the cost set forth.

Signed: [Signature] Date: 1Address: [Address]City: Helena State: MT 59457

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_

Central Montana Crematorium, Inc. agrees to provide the services and merchandise indicated in this Agreement.  
Central Montana Crematorium, Inc.

By: [Signature]  
(Office)

\* You the purchaser may cancel this transaction at any time prior to midnight of the fifth day after  
this transaction, provided no interment, substantial service or cremation goods have been provided  
hereunder, to cancel, deliver or mail written notice of intent to C.M.C.I. at P.O.Box 882 Lewistown  
Mt. 59457

For more information on State Cemetery, Cremation and Mortuary Regulations Contact:

Board of Funeral Service  
P.O.Box 200513  
Helena, Montana 59620-0513  
(Telephone) (406) 841-2393

40111

## CENTRAL MONTANA CREMATORIUM, INC.

100 Canall Drive  
Lewistown, MT 59457  
(406) 538-4400

Cremation Date: JR 11/2003

## AUTHORIZATION FOR CREMATION AND DISPOSITION

NOTHING IN THIS INSTRUMENT SHALL BE CONSTRUED TO BE A FUNERAL ARRANGEMENT, OR TO TAKE ANY OTHER ACTION IN VIOLATION OF THE TERMS OF 24.147.1503 ARM OR THE STATUTES OF THE STATE OF MONTANA.

THE (UNDERSIGNED), hereinafter referred to as the AUTHORIZED REPRESENTATIVE(s) HEREBY CERTIFY that they are the legal custodian(s) of the herein named Deceased (hereinafter referred to as the Deceased), having full legal authority to authorize the cremation, processing and disposition of the cremated remains of the Deceased and hereby request and authorize CENTRAL MONTANA CREMATORIUM, INC. (hereinafter referred to as the "Crematorium or crematory", to take possession of and make arrangements for the cremation, processing and disposition of the cremated remains of

DATE OF BIRTH: 5-14-19 Noble MURRAY

DATE OF DEATH: \_\_\_\_\_

PLACE OF DEATH: \_\_\_\_\_

in accordance with and subject to: (a) the terms and conditions set forth in this Authorization, (b) the Company's rules and regulations and (c) any applicable State or local laws, rules, laws, rules or regulations.

## DISPOSITION OF CREMATED REMAINS

- ( ) Return to VERA JEAN TRAMMELL - WALLACE within 10 days.  
 ( ) Ship cremated remains via Registered Mail to: \_\_\_\_\_  
 ( ) Deliver to: \_\_\_\_\_  
 ( ) Special Handling: \_\_\_\_\_

- A. The Authorized Representative(s) certify and represent the remains delivered for cremation are those of the Deceased and the Authorized Representative(s) further represent that they have the right to control the disposition of said remains.
- B. The remains of the Deceased will not be accepted for cremation unless they are received in a leak resistant, rigid cremation container. Central Montana Crematorium, Inc. reserves the right to accept or reject a cremation container constructed of noncombustible materials. Remains received in a noncombustible cremation container may be removed prior to cremation and placed in a combustible container, and Central Montana Crematorium, Inc. reserves the right to make disposition of the residue of such container at its sole discretion. In the event that a noncombustible cremation container is accepted for cremation, Central Montana Crematorium, Inc. reserves the right to make disposition of the residue of such container at its sole discretion. Central Montana Crematorium, Inc. is authorized to remove and discard handles or any other items attached to the cremation container which may cause damage to the cremation chamber.
- C. The Authorized Representative(s) understand that due to the nature of the cremation process certain materials, including body prostheses, dental bridgework, dental fillings or personal articles accompanying the remains will either be destroyed or will not be recoverable. Accordingly, the Authorized Representative(s) represent and warrant to Central Montana Crematorium, Inc. that such materials: (i) have been removed from the remains (ii) may be removed from the remains and disposed of by Central Montana Crematorium, Inc. unless otherwise directed in writing by the Authorized Personal Representative(s); or (iii) may be destroyed by the cremation process.
- D. Mechanical devices implanted in the Deceased may create a hazardous condition when placed in a cremation chamber. CENTRAL MONTANA CREMATORIUM, INC. will not, therefore, cremate any human remains, which contain any type of implanted mechanical device. THE AUTHORIZED REPRESENTATIVE(S) CERTIFY THAT THE REMAINS OF THE DECEASED ( DO NOT ) NOT CONTAIN ANY TYPE OF IMPLANTED MECHANICAL DEVICE OR RADIOLOGICAL IMPLANT. In the event the remains of the Deceased do not contain such a device, the Authorized Representative(s) hereby authorize and instruct CENTRAL MONTANA CREMATORIUM, INC. its agents, and employees, to contact the appropriate persons and secure approval of any and all mechanical devices from the remains prior to commencement of the cremation process. The Authorized Representative(s) also agree to indemnify CENTRAL MONTANA CREMATORIUM, INC., its affiliates, and their agents and employees, against loss from any and all claims, demands or damages which may be made or declared against it or them by reason of the failure of the Authorized Representative(s) to timely declare the existence of such implanted mechanical device(s). The following list describes all existing devices (including all mechanical and prosthetic devices which may be implanted in or attached to the Deceased) to be removed from the remains of the Deceased and disposed of as instructed below:

Description: \_\_\_\_\_

## Disposition:

If no instruction for disposition of a mechanical device is given herein, CENTRAL MONTANA CREMATORIUM, INC. is authorized to dispose of such an implant at its sole discretion.

- E. Cremated remains consist primarily of bone fragments, which are reduced to permit their placement in an urn or other suitable container. Unless a suitable container is purchased for the cremated remains of the deceased, the Crematory will place such remains in a container which is designed for short-term use and not recommended for any type of shipment. In the event the capacity of the urn or other container is insufficient to accommodate all of the cremated remains of the Deceased, the Crematory is hereby authorized to make disposition of the remaining cremated remains of the Deceased at its discretion, unless otherwise instructed in writing by the Authorized Representative(s). The Crematory is specifically authorized to commingle any remaining cremated remains of the deceased in a common receptacle for disposition. The Authorized Representative(s) understand that even with the exercise of reasonable care and the use of its best efforts, the Crematory may not be able to recover all the particles of the cremated remains of the deceased and some particles may inadvertently become commingled with particles of other cremated remains. The Authorized Representative(s) hereby expressly authorize the incidental or inadvertent commingling of particles of cremated remains of the deceased with particles of other cremated remains remaining in the cremation chamber and/or other devices utilized to reduce the cremated remains and the disposition of any remaining particles of cremated remains of the deceased at the sole discretion of the Crematory. Initial: \_\_\_\_\_
- F. The Authorized Representative(s) agree that if permanent arrangements for disposition of the cremated remains are to be carried out by the Authorized Representative(s) or their duly authorized agent, and such arrangements have not been completed within 120 days after the date of the availability of such cremated remains for final disposition, CENTRAL MONTANA CREMATORIUM, INC. shall give any written notice which is required by applicable state law. Thereafter, CENTRAL MONTANA CREMATORIUM, INC. is authorized and directed to dispose of the cremated remains in any manner it may deem suitable, either (i) 120 days after such written notification, if written notice is required, or (ii) 120 days after the availability of such cremated remains for final disposition if written notice is not required. Initial: \_\_\_\_\_
- G. The obligation of CENTRAL MONTANA CREMATORIUM, INC. shall be limited to the cremation of the remains of the Deceased and the disposition of the cremated remains as directed herein. The Authorized Representative(s) agree to release and hold CENTRAL MONTANA CREMATORIUM, INC., its affiliates and their agents, employees and assigns, harmless from any and all loss, damages, liability or causes of action (including Attorney fees and expenses of litigation) in connection with the cremation and disposition of the cremated remains as authorized herein or the failure of the Authorized Representative(s) to identify properly the remains of the Deceased or take possession of or make permanent arrangements for the disposition of such remains. No warranties expressed or implied are made and damages shall be limited to the refund of the cremation fee paid hereunder.

SIGNATURE OF PERSON(S) AUTHORIZING CREMATION AND DISPOSITION

SIGNATURE: Vera J. Trammell-Wallace PRINT NAME: VERA J. TRAMMELL-WALLACE

AUTHORIZED REPRESENTATIVE

RELATIONSHIP TO DECEASED: SISTERADDRESS: 100 Main Street, Room 100 CITY: BOZEMAN STATE: MT ZIP: 59717WAS CREMATION PURCHASED BEFORE NEED: YES ☒ NO ☐CREMATION FEE \$ 675.00CREMATION REMAINS REFUSED TO: VERA J. TRAMMELLRELATIONSHIP: SisterFOR: CENTRAL MONTANA CREMATORIUM, INC. DATE: 10/16/2003Carol C. Macgregor





March 23, 2004

This response sent  
by email 3-23-04

To: Christina Medina  
Compliance Specialist, Health Care Licensing Bureau,  
P.O. Box 200513  
Helena, MT 59620-0513

Fm: Michael Trammell  
And Jean Trammell  
Hobson, MT 59452

Re: Central Montana Crematorium, 2004-7 and 2004-8

Please deliver this letter to the Screening Committee.

This is in response to a recent letter written by Jim Harris of Creel Funeral Home, Lewistown and filed with him complaints against Central Montana Crematorium, 2004-7 and 2004-8.

My mother, Jean Trammell/Wallace and I are upset by what Mr. Harris said in his letter. Many of his statements are very inaccurate.

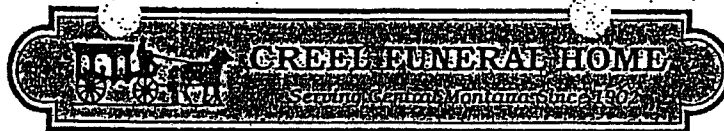
1. We were never told that the crematorium was affiliated with any funeral home and did not believe that to be so. We did not say that. We believed they cooperated with one another.
2. Central Montana Crematorium, Inc. did not hold any of my uncle's funds. They were in a CD under his sole control and were not paid to the crematorium until after his death and cremation.
3. He told us that Central Montana Crematorium, Inc. could not recover my uncle's body nor do what was agreed between them and my uncle. We since learn that this is not so.
4. My uncle could not have gone to see Harris in August; he perhaps did talk to him at the nursing home. Since he was with my mother or their brother during most of the time, it seems unlikely that we would have been unaware of any conversation between him and Harris.
5. In October my uncle, Noble Murray was hospitalized because of a urinary infection. At that time his health was declining rapidly and the only expression of choice he made was to have his body cremated at Central Montana Crematorium and the cremated remains sent to Ft. Harrison by his family. Prior to my uncle's death, Jim Harris was informed that he would not be taking care of my uncle's body.

ATTACHMENT 4

It is obvious that Mr. Harris is trying to damage the crematorium in any manner he can. To try to get this done, he worked against my Mother and me as we tried to get things taken care of at my Uncle's death. Freedom of choice for my mother and my late uncle were totally ignored by Mr. Harris.

Sincerely,

Michael Trammell  
Jean Trammell/Wallace



James E. Harris, President

July 7, 2004

Board of Funeral Service  
Bruce Duenkler  
PO Box 200513  
Helena, MT 59620-0513

RECEIVED

JUL 08 2004

HCLB

Re: Central Montana Crematorium

You have a complaint on file dated February 23, 2004. Since that time, several issues have transpired. I am enclosing a copy of a newspaper advertisement in the form of a letter which was published in the Lewistown News Argus.

I am enclosing a tape of a program which was aired on KXLO radio on May 26, 2004; and a tape of radio ads encouraging people to call the crematorium to pre-arrange and find out about their options/choices.

In regards to the taped interview, Mr. Spoja states that cremations are being sent out of town and that the families believe their loved ones are being cremated in Lewistown. This is not true. The cremation authorizations clearly state the name of the crematory being used; and I in fact have had several families request that the local crematory not be used.

I started using the Central Montana Crematorium in October upon its opening... under the premise that Mr. Spoja stated that he would work with both local funeral homes. However, upon his initiation of advertising direct cremations on February 15, 2004, he became a competitor.

As in my complaint, I feel both Mr. Spoja and Mr. Gallagher are in violation of 24.147.302(5) as pre-arrangement and/or pre-paid funeral services should be made with a licensed mortician. In addition, 24.107.302(9 & 11) defines funeral services and funeral providers as requiring a mortician's license and mortuary license. Also, 24.147.1503(1) clearly states that the sale of at-need, pre-need and prepaid funeral arrangements require a duly licensed mortician or funeral director.

It is my professional opinion that with the recent advertising, Mr. Spoja and Mr. Gallagher are continuing to put themselves out to be funeral directors by encouraging families to contact Central Montana Crematorium, Inc. to see what options they offer.

Thank you again for your attention in this matter.

Sincerely,

*James E. Harris*  
James E. Harris

ATTACHMENT 5

have been refined, other be more like \$170,000. have been added, and Burkland said that may be the cost could be more. final cost and if so, the airport additional funds may be will apply for the additional able because some air- funds.

C  
A  
N  
Developing Natural Resources Value Added  
Industries  
Kasten for State Rep., Betty Lou Kasten, Treas.  
Brockway, MT 59214

## Central Montana Crematorium, Inc.

License: 192 CRE  
P. O. Box 882  
100 Cattail Drive  
Telephone: (406) 538-4400  
Lewistown, Montana 59457

May 29, 2004

To the People of Central Montana:

The Central Montana Crematorium has been open since last October and our staff has had considerable experience in addition to its training in one of the West's largest crematoriums. We have one of the newest and most up-to-date crematoriums in the state of Montana. Our prices meet or match any in the state. If there is any question about this please feel free to give us a call to inquire.

Therefore, we are announcing today that we are now making the following available to our local people:

1. We continue to be ready to do cremations through the local funeral homes. You need to specify that you desire local services since nearly all local cremations have recently been sent out of town. Considering both cremation and transportation our price is fully competitive.

2. We are inaugurating DIRECT CREMATIONS. The full price is \$995.

It is our belief that the people of this community should have this cost saving service available to them. We know and understand that some desire to have funeral directing which we do not do; we also know that not all persons want to use cremation. Nonetheless, we believe that the price should be fair and right for those who do use cremation.

If you have any questions or concerns, please call our manager at 538-4400. He will be glad to show you our facilities and to answer your questions and concerns.

Sincerely,

Allen C. Gallagher, Sr.  
Allen C. Gallagher, Sr.  
Manager

**CREELE FUNERAL HOME**  
**601 WEST MAIN, P.O. BOX 991**  
**LEWISTOWN, MT 59457**  
**(406) 538-8755**

**STATEMENT OF FUNERAL GOODS AND SERVICES SELECTED AND PAYMENT AGREEMENT**

Charges are only for those items that you selected or that are required. If we are required by law, cemetery or crematory to use any items, we will explain the reasons below. If you selected a funeral that may require embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for anything you did not approve, such as a direct cremation or immediate burial. If we charge for embalming, we explain why below.

FUNERAL OF: Noble Murray

DATE: Dec. 17, 2003

**CHARGE FOR SERVICES SELECTED**

**Professional Services:**

Basic Services of Funeral Director & Staff \_\_\_\_\_ \$  
 Embalming \_\_\_\_\_ \$  
 Other Care & Preparation of Body \_\_\_\_\_ \$

**Facilities, Equipment & Staff:**

Use of Facilities & Staff for Viewing/Visitation \_\_\_\_\_ \$  
 Use of Facilities & Staff for Funeral Services \_\_\_\_\_ \$  
 Use of Facilities & Staff for Memorial Services \_\_\_\_\_ \$  
 Use of Facilities & Staff for Graveside Services \_\_\_\_\_ \$  
 Use of Facilities & Staff for Church Services \_\_\_\_\_ \$

**Automotive Equipment and Transportation:**

Removal and Transfer to Mortuary \_\_\_\_\_ \$  
 Funeral Coach/Hearse \_\_\_\_\_ \$  
 Family Limousine \_\_\_\_\_ \$  
 Pallbearer Limousine \_\_\_\_\_ \$  
 Service/Utility Vehicle \_\_\_\_\_ \$  
 Horse Drawn Hearse \_\_\_\_\_ \$

**Other Services / Facilities / Equipment:**

\_\_\_\_\_ \$  
 \_\_\_\_\_ \$  
 \_\_\_\_\_ \$

**TOTAL OF SERVICES SELECTED** \_\_\_\_\_ \$

**CHARGE FOR MERCHANDISE SELECTED**

Casket \_\_\_\_\_ \$  
 Outer Burial Container \_\_\_\_\_ \$  
 Alternate Container \_\_\_\_\_ \$  
 Register Book \_\_\_\_\_ \$  
 Memorial folders \_\_\_\_\_ \$  
 Acknowledgment Cards \_\_\_\_\_ \$  
 Urn \_\_\_\_\_ \$  
 Urn Vault \_\_\_\_\_ \$  
 Monument/Marker \_\_\_\_\_ \$  
 Setting \_\_\_\_\_ \$  
 Maintaining monument/ marker \_\_\_\_\_ \$

**TOTAL OF MERCHANDISE SELECTED** \_\_\_\_\_ \$ 145.00

**SPECIAL CHARGES**

**Forwarding remains to**

Receiving remains from \_\_\_\_\_ \$  
 Immediate Burial \_\_\_\_\_ \$  
 Immediate Cremation \_\_\_\_\_ \$  
 Immediate Cremation with Memorial Service \_\_\_\_\_ \$  
 Following at Chapel, Church or other facility \_\_\_\_\_ \$  
 Immediate cremation with Memorial Graveside Service \_\_\_\_\_ \$  
 Chapel or Church service with body present and cremation following \_\_\_\_\_ \$

**TOTAL OF SPECIAL CHARGES** \_\_\_\_\_ \$ 1755.02

**ACCOMMODATION LOANS (CASH ADVANCES)**

Minister/Honorarium \_\_\_\_\_ \$  
 Organist or other \_\_\_\_\_ \$  
 Soloist or other \_\_\_\_\_ \$  
 Certified copies of death certificates 4 @ \$ 3.00 each \_\_\_\_\_ \$ 12.00  
 Paid obituary \_\_\_\_\_ \$  
 Cemetery Expenses: \_\_\_\_\_ \$  
 Plot \$ \_\_\_\_\_ \$  
 Excavation \$ \_\_\_\_\_ \$

**TOTAL OF ACCOMMODATION LOANS** \_\_\_\_\_ \$

**SUMMARY OF CHARGES:**

SERVICES \_\_\_\_\_ \$  
 MERCHANDISE \_\_\_\_\_ \$ 145.00  
 SPECIAL CHARGES \_\_\_\_\_ \$ 1755.02  
 CASH ADVANCES \_\_\_\_\_ \$ 12.00

**TOTAL** \_\_\_\_\_ \$ 1912.00

**CASH PAYMENTS**

United States Marine Corps Veteran \_\_\_\_\_ \$ 350.00

**BALANCE DUE** \_\_\_\_\_ \$ 1662.00

payment from crematorium \_\_\_\_\_ \$ 475.00

Additional items added by family, verbally or otherwise after signing: \_\_\_\_\_ \$

\_\_\_\_\_ \$

**Total with additional items** \_\_\_\_\_ \$ 1187.00

**FEDERAL AND STATE LAWS**

**Reason for embalming:**

If any law, cemetery or crematory requirements have required the purchase of any items listed, the law or requirement is explained below.

Cremation requires alternative container

Mr. Harrison Cemetery requires urn vault

**DISCLOSURE AND AGREEMENT**

1. The following items have been disclosed by authorized personnel to the person or persons making funeral arrangements.

- The range of prices available for the funeral and other services.
- The range of prices for major items of merchandise.
- As accurately as can be estimated, the related expenses of services or merchandise furnished by other.

2. An accurate statement of legal requirements has been made to the person or persons making the funeral arrangements as to the following:

- The conditions under which embalming is required.
- The necessity, if any, for an interment receipt.
- Accurate representations as to the use of a casket or other receptacle in connection with the funeral, or use of an alternate thereto, for final disposition.

I (We) acknowledge receipt of a completed copy of this statement at the time of execution, and further acknowledge that I (we) have read and understand the same.

Burial Container Price List, with the attendant statement regarding the need for embalming, further purchase of caskets or outer burial containers and warranty disclaimers. I (We) have also been told that Creel Funeral Home, Inc. will not assume liability for the condition of an unembalmed body due to natural decomposition or refrigeration and I (we) release Creel Funeral Home, Inc. of this liability.

Int. 9.97

**TERMS OF THIS CONTRACT:**

**Payment of Expenses:**

**ACCOMMODATION LOANS:** Due at time of service.

**INSURANCE ASSIGNMENT:** Benefits for the amount due on this contract may be assigned directly to the funeral home.

**FINANCE CHARGE:** A finance charge of 1 1/2 % per month of the unpaid balance, which is equivalent to an annual percentage rate of 18%, will be added to the unpaid balance if the account is not paid in full within 30 days from the date of the contract.

**TIME PAYMENTS:** Upon approval of Creel Funeral Home and all Accommodation Loans (Cash Advances) are paid in full, then a time payment plan may be set up which requires a 20% down payment on the balance and payments for 12, 18, or 24 months at a finance charge of 1 1/2 % per month.

**ESTATE PLAN:** An 18% annual finance charge plus a fee for filing creditors claims will be charged to all accounts put into an estate.

The foregoing terms of this contract have been read by (to), me (us) and I (we) hereby agree to pay, according to the terms of this contract, the above funeral account and for such additional services and materials as ordered by me as stated above. The liability assumed is in addition to the liability imposed by law upon the estate and others, and shall not constitute a release thereof.

Int. 9.97

**NOTE:** In circumstances indicated by present financial ability or previous payment history, we reserve the right to limit provided services and merchandise selections; to have all cash advances paid prior to the service; and to require full or partial payment in advance of services.

**COLLECTION POLICY:** This contract will be turned over for collection if no payments have been made or no payment plan has been agreed upon by both Creel Funeral Home and the signed purchaser of this contract within 90 days of the date signed. If this contract is placed in the hands of an attorney, or action is instituted thereon, for collection, in either case, I (we) promise to pay reasonable collection fees, in addition to the contract balance, finance charges and court costs.

All prices have been disclosed in writing. All applicable statutes and/or rules or the absence thereof have been disclosed.

Dated and signed this 17th day of December, 2003 Time \_\_\_\_\_

PURCHASER 9.97 PURCHASER \_\_\_\_\_

Address Box 271 Address \_\_\_\_\_

City Helena State MT Zip 59452 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Phone 406-423-5537 Phone \_\_\_\_\_

Creel Funeral Chapel, Inc. agrees to provide the services and merchandise described above in consideration of the payment of the amount stated above.

By: James E. Harrison

FOR MORE INFORMATION ON STATE CEMETERY, CREMATION, AND MORTUARY REGULATIONS, CONTACT: BOARD OF FUNERAL SERVICES, P.O. BOX 20513, HELENA, MT 59520-0513. TELEPHONE 444-5433.

Patient Name: NORIE MURRAY  
Social Security Number: [REDACTED]  
Date of Birth: [REDACTED]  
Age: 84 Sex: M  
Date Admitted: 10/15/03 Time: 1100  
Date of Death: 12/17/03 Time: 0540

**I. ELIGIBILITY - Prior to addressing the family:**

A. The procurement coordinator must be contacted on all deaths to determine suitability for donation.  
Ventilated Patients: phone 1-888-543-3287  
Non-Ventilated Patients: phone 1-888-266-4466

Name of Procurement Coordinator \_\_\_\_\_

B. Candidate for Organ/Tissue Donation:  
☐ Yes  
☐ No - reason: \_\_\_\_\_  
If no donation, proceed to Section III Notification.

The patient is a potential donor for the following organs/tissues (check all that apply):  
☐ Organs ☐ Bones/Tissue ☐ Eyes  
☐ Heart for Valves ☐ Research Tissues

**II. REQUEST**

A. Individual designated to approach family: (name) \_\_\_\_\_

B. Coroner (if applicable) \_\_\_\_\_  
If coroner's case, complete Section III D

C. Response of Family:  
☐ Yes - Complete Consent for Organ and Tissue Donation form  
☐ No - Indicate family reason for denial: \_\_\_\_\_

Next-of-kin to whom request was made:  
Name: \_\_\_\_\_  
Relationship: \_\_\_\_\_

**III. NOTIFICATION**

A. Next-of-kin: JEAN WALLACE  
Name: VERA TRAMMELL  
Address: P.O. BOX 271 HOBSON MT 59452  
Phone: (406) 423-5537

B. Primary Physician(s) DR. BENNETT Time notified: \_\_\_\_\_  
Time notified: \_\_\_\_\_

C. Was patient in isolation at time of death?  
☐ Yes - What type: \_\_\_\_\_  
☒ No

D. Coroner's Case: ☐ Yes ☒ No  
(If yes copy this form to coroner)  
Body released: ☒ Yes ☐ No  
Released for donation: ☐ Yes ☒ No  
Name of coroner notified: \_\_\_\_\_

E. Autopsy:  
☐ Yes - requester: ☐ Coroner ☐ Next-of-kin (fill out autopsy form)  
☒ No

**IV. DISPOSITION**

A. Disposition of valuables/belongings:  
☐ To family ☐ To funeral home ☒ Kept on unit  
List of Valuables: \_\_\_\_\_

B. Funeral Home (name, phone):  
CREEKS 538-8755

C. Funeral Home notified by:  
Name: JOSEPH MYERS RN Time: 0640

I hereby request and authorize the release of the body of the deceased to care for, embalm and otherwise prepare for burial and/or other disposition. Restrictions: \_\_\_\_\_

BY PHONE CONSENT 12-17-03  
JEAN WALLACE 0610  
Signature (Release of Body) Date/Time  
SISTER  
Relationship  
Joseph Myers 12-17-03/0630  
RN Signature Date/Time  
J. Harris 12-17-03 0730  
Mortician Signature 121603 Date/Time

ADDRESSOGRAPH

CENTRAL MONTANA MEDICAL CENTER  
408 Wendell Avenue, PO Box 580  
Missoula, Montana 59457  
406-538-7711  
RECORD OF DEATH  
MR-2.27 8/81, R 6/84, 7/99

40111

Central Montana Crematorium, Inc.  
 P.O. Box 882, 100 Cattail Drive, Lewistown, MT 59457  
 Telephone: (406)538-4400; Fax (406)538-4401

### Agreement for Cremation Services

NOTHING IN THIS INSTRUMENT SHALL BE CONSTRUED TO BE A FUNERAL  
 ARRANGEMENT, OR TO TAKE ANY OTHER ACTION IN VIOLATION OF THE TERMS OF  
 24.147.1503 OR THE STATUTES OF THE STATE OF MONTANA.

Date of Agreement: Oct 16, 2003

Name of Decedent: Noble MURRAY

Social Security no. [REDACTED]

Date of Death: \_\_\_\_\_

Cremation I.D. Tag Number: \_\_\_\_\_

Charges:

Cremation Container:

Urn:

Other Container:

Cremation Charges:

Mileage: At \_\_\_\_\_ per mile:

Rental of Facilities:

Mailing of Remains ----- ( \$ 50.00 )

Total Miles: \_\_\_\_\_

Total All Charges

The undersigned authorizes the Central Montana Crematorium, Inc. to provide the above services at the cost set forth.

Signed: [Signature]

Date: \_\_\_\_\_

Address: Box 271

City: Helena

State: MT

59457

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Central Montana Crematorium, Inc. agrees to provide the services and merchandise indicated in this Agreement.  
 Central Montana Crematorium, Inc.

By: [Signature]

(Office)

\* You the purchaser may cancel this transaction at any time prior to midnight of the fifth day after this transaction, provided no interment, substantial service or cremation goods have been provided hereunder, to cancel, deliver or mail written notice of intent to C.M.C.I. at P.O. Box 882 Lewistown Mt. 59457

For more information on State Cemetery, Cremation and Mortuary Regulations Contact:

Board of Funeral Service  
 P.O. Box 200513  
 Helena, Montana 59620-0513  
 (Telephone) (406) 841-2393



40111

## CENTRAL MONTANA CREMATORIUM, INC.

100 Cattail Drive  
Lewistown, MT 59457  
(406) 538-4400

Cremation Date: July 1, 2003

## AUTHORIZATION FOR CREMATION AND DISPOSITION

NOTHING IN THIS INSTRUMENT SHALL BE CONSTRUED TO BE A FUNERAL ARRANGEMENT, OR TO TAKE ANY OTHER ACTION IN VIOLATION OF THE TERMS OF 24.147.1503 ARM OR THE STATUTES OF THE STATE OF MONTANA.

THE UNDERSIGNED, hereinafter referred to as the AUTHORIZED REPRESENTATIVE (s) HEREBY CERTIFY that they are the legal custodian(s) of the herein named Deceased (hereinafter referred to as the Deceased), having full legal authority to authorize the cremation, processing and disposition of the cremated remains of the Deceased and hereby request and authorize CENTRAL MONTANA CREMATORIUM, INC. (hereinafter referred to as the "Crematorium or crematory", to take possession of and make arrangements for the cremation, processing and disposition of the cremated remains of

DATE OF BIRTH: 5-4-19 Noble MURRAY

PLACE OF BIRTH: \_\_\_\_\_

PLACE OF DEATH: \_\_\_\_\_

in accordance with and subject to: (a) the terms and conditions set forth in this Authorization, (b) the Company's rules and regulations and (c) any applicable State or local laws, rules, laws, rules or regulations.

## DISPOSITION OF CREMATED REMAINS

- ( ) Return to VERA JEAN TRAMMELL - WALLACE within 10 days.  
( ) Ship cremated remains via Registered Mail to: \_\_\_\_\_  
( ) Deliver to: \_\_\_\_\_  
( ) Special Handling: \_\_\_\_\_

- A. The Authorized Representative(s) certify and represent the remains delivered for cremation are those of the Deceased and the Authorized Representative(s) further represent that they have the right to control the disposition of said remains.
- B. The remains of the Deceased will not be accepted for cremation unless they are received in a leak resistant, rigid cremation container. Central Montana Crematorium, Inc. reserves the right to accept or reject a cremation container constructed of noncombustible materials. Remains received in a noncombustible cremation container may be removed prior to cremation and placed in a combustible container, and Central Montana Crematorium, Inc. reserves the right to make disposition of the residue of such container at its sole discretion. In the event that a noncombustible cremation container is accepted for cremation, Central Montana Crematorium, Inc. reserves the right to make disposition of the residue of such container at its sole discretion. Central Montana Crematorium, Inc. is authorized to remove and discard handles or any other items attached to the cremation container which may cause damage to the cremation chamber.
- C. The Authorized Representative(s) understand that due to the nature of the cremation process certain materials, including body prostheses, dental bridgework, dental fillings or personal articles accompanying the remains will either be destroyed or will not be recoverable. Accordingly, the Authorized Representative(s) represent and warrant to Central Montana Crematorium, Inc. that such materials: (i) have been removed from the remains (ii) may be removed from the remains and disposed of by Central Montana Crematorium, Inc. unless otherwise directed in writing by the Authorized Representative(s); or (iii) may be destroyed by the cremation process.
- D. Mechanical devices implanted in the Deceased may create a hazardous condition when placed in a cremation chamber. CENTRAL MONTANA CREMATORIUM, INC. will not, therefore, cremate any human remains, which contain any type of implanted mechanical device. THE AUTHORIZED REPRESENTATIVE(S) CERTIFY THAT THE REMAINS OF THE DECEASED ( DO / DO NOT ) CONTAIN ANY TYPE OF IMPLANTED MECHANICAL DEVICE OR RADIOLOGICAL IMPLANT. In the event the remains of the Deceased do not contain such a device, the Authorized Representative(s) hereby authorize and instruct CENTRAL MONTANA CREMATORIUM, INC., its agents, and employees, to contact the appropriate persons and secure approval of any and all mechanical devices from the remains prior to commencement of the cremation process. The Authorized Representative(s) also agree to indemnify CENTRAL MONTANA CREMATORIUM, INC., its affiliates, and their agents and employees, against loss from any and all claims, demands or damages which may be made or declared against it or them by reason of the failure of the Authorized Representative(s) to timely disclose the existence of such implanted mechanical device(s). The following list describes all existing devices (including all mechanical and prosthetic devices which may be implanted in or attached to the Deceased) to be removed from the remains of the Deceased and disposed of as instructed below:

Description: \_\_\_\_\_

Disposition:

If no instruction for disposition of a mechanical device is given herein, CENTRAL MONTANA CREMATORIUM, INC. is authorized to dispose of such an implant at its sole discretion.

- F. Cremated remains consist primarily of bone fragments, which are reduced to permit their placement in an urn or other suitable container. Unless a suitable container is purchased for the cremated remains of the deceased, the Crematory will place such remains in a container which is designed for short-term use and not recommended for any type of shipment. In the event the capacity of the urn or other container is insufficient to accommodate all of the cremated remains of the Deceased, the Crematory is hereby authorized to make disposition of the remaining cremated remains of the Deceased at its discretion, unless otherwise instructed in writing by the Authorized Representative(s). The Crematory is specifically authorized to commingle any remaining cremated remains of the deceased in a common receptacle for disposition. The Authorized Representative(s) understand that even with the exercise of reasonable care and the use of its best efforts, the Crematory may not be able to recover all the particles of the cremated remains of the deceased and some particles may inadvertently become commingled with particles of other cremated remains. The Authorized Representative(s) hereby expressly authorize the incidental or inadvertent commingling of particles of cremated remains of the deceased with particles of other cremated remains remaining in the cremation chamber and/or other devices utilized to reduce the cremated remains and the disposition of any remaining particles of cremated remains of the deceased at the sole discretion of the Crematory. Initial: \_\_\_\_\_
- F. The Authorized Representative(s) agree that if permanent arrangements for disposition of the cremated remains are to be entered into by the crematory, the crematory will, in such cases, submit a report to the crematory, which is completed within 120 days after the date of the availability of such cremated remains for final disposition, CENTRAL MONTANA CREMATORIUM, INC. shall give any written notice which is required by applicable state law. Thereafter, CENTRAL MONTANA CREMATORIUM, INC. is authorized and directed to dispose of the cremated remains in any manner it may deem suitable, either (i) 120 days after such written notification, if written notice is required, or (ii) 120 days after the availability of such cremated remains for final disposition if written notice is not required. Initial: \_\_\_\_\_
- G. The obligation of CENTRAL MONTANA CREMATORIUM, INC. shall be limited to the cremation of the remains of the Deceased and the disposition of the cremated remains as directed herein. The Authorized Representative(s) agree to release and hold CENTRAL MONTANA CREMATORIUM, INC., its affiliates and their agents, employees and assigns, harmless from any and all loss, damages, liability or causes of action (including Attorney fees and expenses of litigation) in connection with the cremation and disposition of the cremated remains as authorized herein or the failure of the Authorized Representative(s) to identify properly the remains of the Deceased or take possession of or make permanent arrangements for the disposition of such remains. No warranties expressed or implied are made and damages shall be limited to the refund of the cremation fee paid hereunder.

SIGNATURE OF PERSON(S) AUTHORIZING CREMATION AND DISPOSITION

SIGNATURE: TERA J. TRAMME II - WALLACE PRINT NAME: TERA J. TRAMME II - WALLACE

AUTHORIZED REPRESENTATIVE

RELATIONSHIP TO DECEASED: SISTER

100 HIGHWAY 13, HOBSON, MONTANA

ADDRESS: Box 271 Hobson, MT 59026-0271 PHONE NO. 406-423-5537

WAS CREMATION PURCHASED BEFORE NEED: YES ☒ NO ☐

CREMATION FEE \$ 675.00

CREMATION REMAINS RELEASSED TO: TERA J. TRAMME

RELATIONSHIP: SISTER

FOR: CENTRAL MONTANA CREMATORIUM, INC. DATE: 10/16/2003

Carol C. Macgregor Sr.

# Time Account Receipt/Disclosure

Bank name

Wells Fargo Bank Montana, N.A.

Time Account number

Date opened

10/21/2003

Term of Time Account

60 months days

Maturity date

Your Time Account will mature on

10/21/2008

Interest rate

3.00

Fixed rate

Variable rate

X

Annual percentage yield

3.05

Interest will be paid

EVERY 12 MONTHS AND AT WITHDRAWAL

The method of interest payment will be

BY ADDING TO PRINCIPAL

Renewability

YOU WILL AUTOMATICALLY RENEW MY TIME ACCOUNT

AT MATURITY PERIODS OF 60 MONTHS OR 5 YEARS, YOUR CHOICE.

The Bank is opening the above described Time Account for your deposit of

SIX HUNDRED SEVENTY FIVE AND 0/100

Your name and address

\$ 675.00

\*\*TRADE-A-RATE OPTION

NOBLE T MURRAY POD CENTRAL MONTANA CREMATORIUM, INC  
PO BOX 271  
HOBSON MT 59452-0271

10/21/2003 13:16

This is a receipt. It need not be presented at the time you obtain payment from the Bank.  
W00100

CER 0010/1-01 15:11

**CREEL FUNERAL HOME**  
**301 WEST MAIN, P.O. BOX 991**  
**LEWISTOWN, MT 59457**  
**(406) 538-8755**

**STATEMENT OF FUNERAL GOODS AND SERVICES SELECTED AND PAYMENT AGREEMENT**

Charges are only for those items that you selected or that are required. If we are required by law, cemetery or crematory to use any items, we will explain the reasons below. If you selected a funeral that may require embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for anything you did not approve, such as a direct cremation or immediate burial. If we charge for embalming, we explain why below.

**FUNERAL OF:** Noble Murray

**DATE:** Dec. 17, 2003

**CHARGE FOR SERVICES SELECTED**

**Professional Services:**

Basic Services of Funeral Director & Staff \_\_\_\_\_ \$  
 Embalming \_\_\_\_\_ \$  
 Other Care & Preparation of Body \_\_\_\_\_ \$

**Facilities, Equipment & Staff:**

Use of Facilities & Staff for Viewing/Visitation \_\_\_\_\_ \$  
 Use of Facilities & Staff for Funeral Services \_\_\_\_\_ \$  
 Use of Facilities & Staff for Memorial Services \_\_\_\_\_ \$  
 Use of Facilities & Staff for Graveside Services \_\_\_\_\_ \$  
 Use of Facilities & Staff for Church Services \_\_\_\_\_ \$

**Automotive Equipment and Transportation:**

Removal and Transfer to Mortuary \_\_\_\_\_ \$  
 Funeral Coach/Hearse \_\_\_\_\_ \$  
 Family Limousine \_\_\_\_\_ \$  
 Pallbearer Limousine \_\_\_\_\_ \$  
 Service/Utility Vehicle \_\_\_\_\_ \$  
 Horse Drawn Hearse \_\_\_\_\_ \$

**TOTAL OF SERVICES SELECTED** \_\_\_\_\_ \$

**CHARGE FOR MERCHANDISE SELECTED**

Casket \_\_\_\_\_ \$  
 Outer Burial Container \_\_\_\_\_ \$  
 Alternate Container \_\_\_\_\_ \$  
 Register Book \_\_\_\_\_ \$  
 Memorial folders \_\_\_\_\_ \$  
 Acknowledgment Cards \_\_\_\_\_ \$  
 Urn \_\_\_\_\_ \$  
 Urn Vault \_\_\_\_\_ \$  
 Monument/Marker \_\_\_\_\_ \$  
 Setting monument/ marker \_\_\_\_\_ \$

**TOTAL OF MERCHANDISE SELECTED** \_\_\_\_\_ \$ 145.00

**SPECIAL CHARGES**

**Forwarding remains to:**

Receiving remains from \_\_\_\_\_ \$  
 Immediate Burial \_\_\_\_\_ \$  
 Immediate Cremation \_\_\_\_\_ \$  
 Immediate Cremation with Memorial Service following at Chapel, Church or other facility \_\_\_\_\_ \$ 1745.00  
 Immediate cremation with Memorial Graveside Service \_\_\_\_\_ \$  
 Chapel or Church services with body present and cremation following \_\_\_\_\_ \$

**TOTAL OF SPECIAL CHARGES** \_\_\_\_\_ \$ 1755.02

**ACCOMMODATION LOANS (CASH ADVANCES)**

Minister Honorarium \_\_\_\_\_ \$  
 Organist or other \_\_\_\_\_ \$  
 Soldier or other \_\_\_\_\_ \$  
 Certified copies of death certificates 4 @ 3.00 each \_\_\_\_\_ \$ 12.00  
 Paid obituary \_\_\_\_\_ \$  
 Cemetery Expenses:  
 Plot \$ \_\_\_\_\_ Excavation \$ \_\_\_\_\_ \$  
 \_\_\_\_\_ \$  
 \_\_\_\_\_ \$  
 \_\_\_\_\_ \$

**TOTAL OF ACCOMMODATION LOANS** \_\_\_\_\_ \$

**SUMMARY OF CHARGES**

**SERVICES** \_\_\_\_\_ \$  
**MERCHANDISE** \_\_\_\_\_ \$ 145.00  
**SPECIAL CHARGES** \_\_\_\_\_ \$ 1755.02  
**CASH ADVANCES** \_\_\_\_\_ \$ 12.00  
**TOTAL** \_\_\_\_\_ \$ 1912.00

**CREMATION PAYMENTS**

Indira Babin County Veteran \_\_\_\_\_ \$ 250.00  
**BALANCE DUE** \_\_\_\_\_ \$ 1662.00  
payment from crematorium \_\_\_\_\_ \$ 475.00  
 Additional items added by family, verbally or otherwise after signing: \_\_\_\_\_ \$  
 \_\_\_\_\_ \$  
**Total with additional items** \_\_\_\_\_ \$ 1187.00

**FEDERAL AND STATE LAWS**

**Reason for embalming:**

If any law, cemetery or crematory requirements have required the purchase of any items listed, the law or requirement is explained below.

Crematory requires alternative container

Mr. Harrison Chenevey requires urn shell

**DISCLOSURE AND AGREEMENT**

1. The following items have been disclosed by authorized personnel to the person or persons making funeral arrangements.

- The range of prices available for the funeral and other services.
- The range of prices for major items of merchandise.
- As accurately as can be estimated, the related expenses of services or merchandise furnished by others.

2. An accurate statement of legal requirements has been made to the person or persons making the funeral arrangements as to the following:

- The conditions under which embalming is required.
- The necessity, if any, for an interment receptacle.
- Accurate representations as to the use of a casket or other receptacle in connection with the funeral, or use of an alternate thereto, for final disposition.

I (We) acknowledge receipt of a completed copy of this statement at the time of execution, and I (We) have also been told that Creel Funeral Home, Inc. will not assume liability for the condition of an unembalmed body due to natural decomposition or refrigeration and I (we) release Creel Funeral Home, Inc. of this liability.

Int. 9.87

**TERMS OF THIS CONTRACT:**

**Payment of Expenses:**

**ACCOMMODATION LOANS:** Due at time of service.

**INSURANCE ASSIGNMENT:** Benefits for the amount due on this contract may be assigned directly to the funeral home.

**FINANCE CHARGE:** A finance charge of 1 1/2% per month of the unpaid balance, which is equivalent to an annual percentage rate of 18%, will be added to the unpaid balance if the account is not paid in full within 30 days from the date of the contract.

**TIME PAYMENTS:** Upon approval of Creel Funeral Home and of Accommodation Loans (Cash Advances) are paid in full, then a time payment plan may be set up which requires a 20% down payment on the balance and payments for 12, 18, or 24 months at a finance charge of 1 1/2% per month.

**ESTATE PLAN:** An 18% annual finance charge plus a fee for filing creditors claims will be charged to all accounts put into an estate.

The foregoing terms of this contract have been read by (to) me (us) and I (we) hereby agree to pay, according to the terms of this contract, the above funeral services and for such additional services and materials as ordered by me as stated above. The liability assumed is in addition to the liability imposed by law upon the estate and others, and shall not constitute a release thereof.

Int. 9.87

**NOTE:** In circumstances indicated by present financial ability or previous payment history, we reserve the right to limit provided services and merchandise selections, to have all cash advances paid prior to the service; and to require full or partial payment in advance of services.

**COLLECTION POLICY:** This contract will be turned over for collection if no payments have been made or no payment plan has been agreed upon by both Creel Funeral Home and the signed purchaser of this contract within 90 days of the date signed. If this contract is placed in the hands of an attorney, or action is instituted thereon, for collection, in either case, I (we) promise to pay reasonable collection fees, in addition to the contract balance, finance charges and court costs.

All prices have been disclosed in writing. All applicable statutes and/or rules or the absence thereof have been disclosed.

Dated and signed this 17<sup>th</sup> day of December, 2003 Time \_\_\_\_\_  
 PURCHASER Indira Babin PURCHASER \_\_\_\_\_  
 Address Box 271 Address \_\_\_\_\_  
 City Helena State MT Zip 59452 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
 Phone 406-423-5537 Phone \_\_\_\_\_

Creel Funeral Chapel, Inc. agrees to provide the services and merchandise described above in consideration of the payment of the amount stated above.

By: Ormond Babin  
 SIGNATURE OF LICENSED PROFESSIONAL

FOR MORE INFORMATION ON STATE CEMETERY, CREMATION, AND MORTUARY REGULATIONS, CONTACT: BOARD OF FUNERAL SERVICES, P.O. BOX 20513, HELENA, MT 59520-0513. TELEPHONE 444-5433.

Patient Name: NORIE MURRAY  
Social Security Number: [REDACTED]  
Date of Birth: [REDACTED]  
Age: 84 Sex: M  
Date Admitted: 10/15/03 Time: 1100  
Date of Death: 12/17/03 Time: 0540

**I. ELIGIBILITY - Prior to addressing the family:**

- A. The procurement coordinator must be contacted on all deaths to determine suitability for donation.  
Ventilated Patients: phone 1-888-543-3287  
Non-Ventilated Patients: phone 1-888-266-4466

Name of Procurement Coordinator \_\_\_\_\_

- B. Candidate for Organ/Tissue Donation:

☐ Yes

☐ No - reason: \_\_\_\_\_

If no donation, proceed to Section III Notification.

The patient is a potential donor for the following organs/tissues (check all that apply):

☐ Organs ☐ Bones/Tissue ☐ Eyes  
☐ Heart for Valves ☐ Research Tissues

**II. REQUEST**

- A. Individual designated to approach family:  
(name) \_\_\_\_\_

- B. Coroner (if applicable) \_\_\_\_\_

If coroner's case, complete Section III D

- C. Response of Family:

☐ Yes - Complete Consent for Organ and Tissue Donation form

☐ No - Indicate family reason for denial: \_\_\_\_\_

Next-of-kin to whom request was made:

Name: \_\_\_\_\_

Relationship: \_\_\_\_\_

**III. NOTIFICATION**

- A. Next-of-kin: JEAN WALLACE

Name: VERA TRAMMELL

Address: P.O. Box 271 HOBSON MT 59452

Phone: (406) 423-5537

- B. Primary Physician(s)

DR. BENNETT

Time notified: \_\_\_\_\_

Time notified: \_\_\_\_\_

- C. Was patient in isolation at time of death?

☐ Yes - What type: \_\_\_\_\_

☒ No

- D. Coroner's Case:

☐ Yes ☒ No

(If yes copy this form to coroner)

Body released: ☒ Yes ☐ No

Released for donation: ☐ Yes ☒ No

Name of coroner notified: \_\_\_\_\_

Time notified: \_\_\_\_\_

- E. Autopsy:

☐ Yes - requester: ☐ Coroner

☐ Next-of-kin (fill out autopsy form)

☒ No

**IV. DISPOSITION**

- A. Disposition of valuables/belongings:

☐ To family ☐ To funeral home ☒ Kept on unit

List of Valuables: \_\_\_\_\_

- B. Funeral Home (name, phone)

CREEKS 538-8755

- C. Funeral Home notified by:

Name: JOSEPH MYERS RN

Time: 0540

I hereby request and authorize the release of the body of the deceased to care for, embalm and otherwise prepare for burial and/or other disposition. Restrictions: \_\_\_\_\_

BY PHONE CONSENT

12-17-03

JEAN WALLACE (Signature)

0610

Signature (Release of Body)

Date/Time

SISTER

Relationship

Joseph Myers (Signature)

12-17-03 / 0630

RN Signature

Date/Time

Joe Myers (Signature)

12-17-03 0730

Mortician Signature

Date/Time

121603

Date/Time

CENTRAL MONTANA MEDICAL CENTER

108 Wendell Avenue, PO Box 580

Missoula, Montana 59457

406-538-7711

RECORD OF DEATH

MR-2.27 8/81, R 6/84, 7/99

White Copy - Chart

Yellow Copy - Funeral Home

*Bruce*  
(406) 841-2323

\*\*\*\*\*  
TX REPORT  
\*\*\*\*\*

TRANSMISSION OK

TX/RX NO  
CONNECTION TEL  
CONNECTION ID  
ST. TIME  
USAGE T  
PGS. SENT  
RESULT

1395

01/27 18:48

03/26

14

OK

*This is the  
Bruce that I sent  
to hospital. I sent  
him to Central  
Mont. Hospital.*

William A. Spoja, Jr.  
Attorney for Central Montana  
Crematorium, Inc.  
P. O. Box 882  
Lewistown, MT 59457  
(405) 538-8767

Attorney for the Petitioner

BEFORE THE BOARD OF FUNERAL SERVICE  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

## PETITION FOR DECLARATORY RULING

TO: The Board of Funeral Service

1. Pursuant to Section 2-4-501 et seq. as well the applicable Administrative Rules of Montana, CENTRAL MONTANA CREMATORIUM, INC. requests a declaratory rule as to the following:

WHETHER after the permit for removal of a dead body is granted as required under the terms of section 50-15-405 MCA, any provision of Montana Law or of the Administrative Rules of Montana prevents a crematorium not licensed as a mortuary or for funeral directing from doing the following:

- (1) removing a dead body to the crematorium pursuant to section 50-15-405 (4) MCA;
- (2) cremating the remains; and,
- (3) returning said cremated remains to the duly authorized persons.

2. Further, until the declaratory ruling sought hereunder is made, Petitioner

William A. Spoja, Jr.  
Attorney for Central Montana  
Crematorium, Inc.  
P. O. Box 882  
Lewistown, MT 59457  
(405) 538-8767

Attorney for the Petitioner

BEFORE THE BOARD OF FUNERAL SERVICE  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

PETITION FOR DECLARATORY RULING

TO: The Board of Funeral Service

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- (1) removing a dead body to the crematorium pursuant to section 50-15-405 (4) MCA;
- (2) cremating the remains; and;
- (3) returning said cremated remains to the duly authorized persons.

2. Further, until the declaratory ruling sought hereunder is made, Petitioner requests that a temporary order be granted to Central Montana Crematorium, Inc. allowing the actions which would be permitted under the Declaratory Ruling sought herein.

Dated this 9<sup>th</sup> day of January, 2004.

William A. Spoja, Jr., Counsel  
Charles Thomas, Co-Counsel  
Central Montana Crematorium, Inc.

William A. Spoja, Jr., Esq.  
Attorney for the Central Montana  
Crematorium, Inc. (the petitioner)  
P. O. Box 882  
Lewistown, MT 59457  
(406) 538-8767

BEFORE THE BOARD OF FUNERAL SERVICE  
DEPARTMENT OF LABOR  
STATE OF MONTANA

MEMORANDUM IN SUPPORT OF PETITION  
FOR DECLARATORY RULING

The petitioner brings the accompanying petition for a declaratory ruling pursuant to MCA § 2-4-501 ("Declaratory rulings by agencies"), which provides:

Each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision or of any rule or order of the agency. A copy of a declaratory ruling must be filed with the secretary of state for publication in the register. A declaratory ruling or the refusal to issue such a ruling shall be subject to judicial review in the same manner as decisions or orders in contested cases.

The facts giving rise to the petition are as follows:

In December of 2003, Mrs. Jean Trammell, the authorizing agent as defined by MCA § 37-19-101(3), wanted the petitioner to cremate the body of her late brother, Noble Murray, who had asked with her concurrence that his body be cremated and the ashes returned by the petitioner to Mrs. Trammell. Before the petitioner could move the body to its crematorium, however, Mr. Jim Harris of the Creel Funeral Home was contacted by the hospital, a public institution, without inquiring as to the wishes of the known surviving sister. Creel removed the body, despite having no contractual relationship with the decedent or his next of kin. The next day Creel contacted Mrs. Trammell and insisted that only a licensed mortician could transport the body to the crematorium. He further insisted that the ashes had to be returned to him rather than to Mrs. Trammell. Thus pressed by Mr. Harris, Mrs. Trammell permitted him to



475 cs  
transport the body and executed a contract prepared by him. The Creel Funeral Home then refused to transport the body until the petitioner paid \$450 in advance for ferrying the body to the crematorium. In all, according to the attached letter written by Michael Trammell, the Creel Funeral Home charged Mrs. Trammell \$1,700 for "delivery and handling of the body." See letter of January 8, 2004, attached hereto as Exhibit A; see also Affidavit of Allen C. Gallagher, Sr., also attached hereto.

It is obvious from the Trammells' letter that they believe they were therefore denied any freedom of choice of rights in the care of the remains of the decedent.

Clearly, the authority and directions of Mrs. Trammell should have governed in this case.

I.

THE APPLICABLE STATUTES AND REGULATION ON FACE PERMITS THE PETITIONER TO REMOVE A DEAD BODY TO ITS CREMATORIUM WITHOUT THE INVOLVEMENT OF A MORTICIAN OR FUNERAL DIRECTOR.

Section 50-15-405 of the Montana Code Annotated governs the removal, transportation, and final disposition of a dead body (emphases added):

(1) Except as provided in subsection (2), *a dead body may be removed from the place of death only upon the written authorization or oral authorization, which must be reduced to writing within 24 hours, of the physician in attendance at death or the physician's designee, the advanced practice registered nurse in attendance at death, the coroner having jurisdiction, or a mortician licensed under 37-19-302.*

(2) If the death requires inquiry under 45-19-302, the written authorization may only be granted by the coroner having jurisdiction or the coroner's designee or by the state medical examiner if the coroner fails to act. However, when the only reason for inquiry under 46-4-122 is that the body is to be cremated, the coroner may grant oral

authorization for cremation of the body, which must be reduced to writing as specified under subsection (1) by the coroner.

(3) The written authorization to move a dead body or, when applicable, to cremate a dead body must be made in quadruplicate on a form provided by the department. The person in charge of disposition of the dead body, the coroner having jurisdiction, and the local registrar must each be provided with and retain a copy of the authorization. A fourth copy may accompany the body to final disposition, as necessary.

(4) *A written authorization issued under this section permits removal, transportation, and final disposition of a dead body.*

Section 15-50-101 (11), MCA states "Person in charge of disposition of a dead body" means a person who places or causes a dead body or the ashes after cremation to be placed in a grave, vault, urn, or other receptacle or otherwise disposes of the body or fetus and who is a funeral director licensed under Title 37 chapter 19, an employee acting for a funeral director, or a person who first assumes custody of a dead body or fetus.

Section 37.116.101, ARM contains the following definition: "Private conveyor" means any entity other than a common carrier that transports a dead human body, *including but not limited to*, a mortuary or an ambulance service.

The statutes and regulation set out above unambiguously and without qualification permit the petitioner to remove and transport a dead body to the place of "final disposition." Indeed, they do not prevent a licensed crematorium or its licensed technicians from removing and transporting such a body, so long as that person has obtained authorization from any of the persons listed in subsection 1 and is a person who first assumes custody of a dead body or fetus. The fact that a licensed mortician is listed among the five categories of persons empowered by the legislature in section 50-15-405, MCA to grant authorization to remove and transport a dead body confers no special or exclusive authority on morticians to grant or concur in granting authorization or reserving to themselves the business of removing and transporting dead bodies. The legislature under 15-50-101 (11) makes it clear that, in fact, that persons other than a funeral director may first assume custody of a dead body or fetus. This board's own regulation quoted above makes it clear that those transporting a dead human body may be persons other than a mortuary or ambulance service.

Creel's audacious insistence not only caused Mrs. Trammell and her family to incur needless added expense, it complicated matters for them and added to her and her family's emotional distress.

Certainly it is important that the public have a real choice, that its choice be not confused, complicated, or even nullified as a practical matter by misunderstanding of the law or willful misstatements of the law governing the removal and transportation of dead bodies for final disposition. Although the petitioner believes that the law is clear as already written, that MCA § 50-15-405 is straightforward, at least one Lewistown mortician believes otherwise and has already interposed itself between the petitioner and one of its customers. Such interference with petitioner's business relationships and with the wishes of its customers threatens to continue.

## II.

THE BOARD OF FUNERAL SERVICE HAS PROMULGATED A RULE AFFIRMING NEXT-OF-KIN FREEDOM OF CHOICE WHICH IS CONSISTENT WITH THE PETITIONER'S REQUEST FOR A DECLARATORY RULING.

As if to underscore the petitioner's reading of MCA § 50-15-405 to allow a licensed crematorium to remove and transport the deceased for final disposition, the Board of Funeral Service has promulgated rule 24.147.2303, demonstrating its policy and the policy of the State of Montana that the next of kin and family of a deceased person are to have the utmost freedom to choose how to deal with the remains. The rule states (emphases added):

(1) No public officer or employee, or the official of any public institution, or physician or surgeon, or any other person having a professional relationship with any decedent shall send or cause to be sent to any funeral establishment the remains of any deceased person without having first made due inquiry as to the desires of the next of kin and of the person who may be chargeable with the funeral and expenses of such

decedent. *And if any such kin be found, his or her authority and directions shall govern.*

(2) No company, corporation or association engaged in the business of paying or providing for the payment of the expenses of the funeral, disposition or other similar expenses of the funeral, disposition or other similar expenses of the deceased members or of certificate holders therein, or engaged in the business of providing any insurance upon the life of any individual, under which contract of insurance any obligation might or could arise to care for the remains of the insured, shall contract to pay or shall pay any such insurance of such benefits, or any part of either such insurance of benefits, to any funeral establishment or to any licensee or to any individual in any manner which might or could deprive the individual in any manner which might or could deprive the representative, next of kin or family of such deceased person from, or in [any] way control them in procuring such funeral establishment, person licensed for the practice of funeral service *or other proper and competent person to perform such necessary and proper services, and to furnish supplies as may be necessary and proper to care for the remains of such decedent as such representative, next of kin or family may desire.*

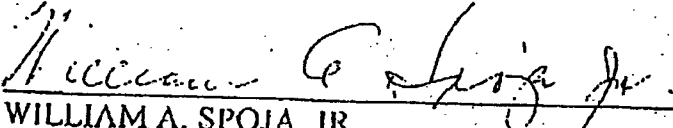
Transparently, Central Montana Crematorium, Inc., being a fully licensed crematorium, would be an "other proper and competent person to perform such necessary and proper services, and to furnish supplies as may be necessary and proper to care for the remains of such decedent as such representative, next of kin or family may desire."

The Creel Funeral Home's representation to Mrs. Trammell and her family that only a licensed mortician could lawfully convey the body of her brother to the petitioner's crematorium and return the cremated remains to the next of kin flies in the face of the statute. And surely no reasonable person would ask or expect any regulatory body to exceed statutory authority in such a manner.

The boldness to mislead the family of a deceased, a family's understandable tendency to believe a misrepresentation of what the law requires, and the realistic concern that even health-care professionals succumb to like intimidations all argue for the Board of Funeral Service to issue the ruling requested in the petition. It is necessary that it be absolutely clear that a licensed and duly authorized crematorium

may transport the body of a deceased person to its own facility and return the cremated remains to the next of kin or other duly authorized person(s) MCA § 50-15-405.

DATED: January 12, 2004

  
WILLIAM A. SPOJA, JR.

P. O. Box 882

Lewistown, MT 59457

(406) 538-8767

ATTORNEY FOR THE PETITIONER

Exhibit "A"

January 8, 2004

To Whom It May Concern:

I am writing this letter in regards to what happened to me and my mother after the death of my Uncle, Noble Murray, at the Lewistown Medical Center Nursing facility.

We were contacted by Jim Harris of Creel Funeral Home. He asked my mother to stop by and sign some papers. Thinking the papers must be for benefits from the Veteran's Administration, we did so.

At that time he presented a document to my mother, Jean Trammell Wallace, which had additional charges of about \$1,700.

When asked about the extra charges, we were told that it was for the delivery and handling of the body. When we told him that my uncle had already decided on using the local crematorium, he told us that he was the only one that could pick up the body and that you have to be a licensed mortician to be able to do this and that the crematorium could not do it.

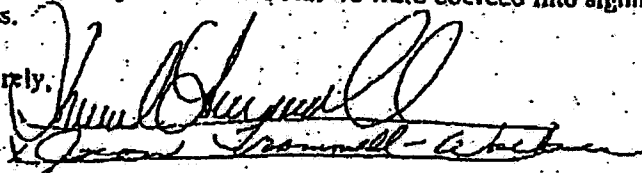
We were told that it was already in process and we had no choice but to sign.

At this point my mother was in shock over the entire matter and just signed as he demanded.

We then went to the hospital and picked up my uncle's things.

We feel that our right as well as my uncle's right to have any choice in this matter had been taken away from us and that we were coerced into signing this document under duress.

Sincerely,



Michael Trammell  
For myself and my mother, Jean Trammell  
Hobson, Montana 59452

William A. Spoja, Jr., Esq.  
Attorney for the Central Montana  
Crematorium, Inc. (the petitioner)  
P. O. Box 882  
Lewistown, MT 59457  
(406) 538-8767

BEFORE THE BOARD OF FUNERAL SERVICE  
DEPARTMENT OF LABOR  
STATE OF MONTANA

AFFIDAVIT OF ALLEN C. GALLAGHER, SR.

COMES NOW Allen C. Gallagher, Sr., being duly sworn, deposes and says:

1. That he is familiar with the contents of the letter of Michael Trammell and his mother Jean Trammell, which letter is attached to the petition herein and is hereby incorporated in this affidavit by reference;
2. That he was involved intimately with relevant transactions and had contact with both Mrs. Trammell and her son Michael Trammell as well as Creel Funeral Home;
3. That except for not being certain of the exact amount charged by Creel, the remainder of Mrs. Trammell's letter appears to be substantially correct;
4. That Mr. Jim Harris of the Creel Funeral Home informed the undersigned that Central Montana Crematorium, Inc. could not lawfully remove the body of Noble Murray and that Mr. Murray's cremated remains would have to be returned to the Creel Funeral Home;
5. That, despite the fact that no funds had been received by Central Montana Crematorium, Inc., the Creel Funeral Home demanded that Central Montana

Crematorium pay \$475 before Mr. Murray's body would be delivered for cremation;  
and

6: That Mrs. Trammell was very upset with the fact that her brother's wishes concerning the disposal of his remains could not be honored.

DATED: January 12, 2004

Allen C. Gallagher, Sr.  
ALLEN C. GALLAGHER, SR.

Subscribed and sworn to before me this 12th day of January, 2004.

Marjorie Green  
Marjorie Green, Notary Public  
State of Montana,  
Residing in Lewistown  
My commission expires 1-11-2006



WILLIAM A. SPOJA, JR.

*Attorney at Law*

THIRD AND BROADWAY  
P.O. BOX 882  
LEWISTOWN, MONTANA 59457  
TELEPHONE (406) 538-8767  
FAX (406) 538-5881

*Our response to General  
Board's letter to us*

Mr. John P. Atkins, Esq.  
Office of Legal Services  
Counsel, Board of Funeral Services  
P. O. Box 200513  
Helena, MT 59620-0513

FAX: (406) 841-2313

Re: Your letter of January 21, 2004

Thank you for your letter relative to the matters addressed before the Board on January 21<sup>st</sup>. To the extent you answered the questions actually asked relative to transportation of dead bodies, your response is helpful and permits the release of the bodies to the crematorium without problem.

I am troubled, however, by your comments in the paragraph which begins on the bottom of page one and continues at the top of page two.

First, we do not do, nor do we intend to do "funeral directing" or "funeral services" as defined in the statutes or the regulation. It is our intention to stay strictly within the authority we have as a crematory.

Second, I am also troubled by your assumption that we would "have to be" providing these services if we bring the body into the crematorium. I do not find such a conclusion being required under the statutes or regs. Am I missing something? How do you come to that conclusion? I recall that the matter was discussed at some length with staff and board at the meeting on the 21<sup>st</sup>. At that time I had the feeling that some were pushing to have me admit that we would have to be doing funeral services or funeral directing after bodies were taken into the crematorium for cremation. That is not so. It was my understanding that we answered those questions on the 21<sup>st</sup>.

In Section 37-19-101 (20) there are a number of things which constitute "funeral directing." We do NONE of these things. Of course, cremated remains can be buried, among other things, but we do not become involved with any of those things. We do not

prepare bodies for burial. We do, however, operate fully under our licensure to do cremations.

Although I believe that we do not violate the provisions of 24.107.302 (9) A.R.M. I believe that rule exceeds the legislative authority upon which it is established. At this time, however, I do not see any need to challenge the reg.

Sincerely,

William A. Spoja, Jr.  
Counsel and President  
Central Montana Crematorium, Inc.

WAS:s

Bruce—

These pages show that Mrs Trammell signed for her brother's cremation in Oct before he died. (I understand he spoke to Harris then)

## Time Account Receipt/Disclosure

Wells Fargo Bank Montana, N.A.		Date opened		Term of Time Account	
[REDACTED]		10/21/2003		60 months	
Your Time Account will mature on		Interest rate	Fixed rate	Variable rate	Annual percentage yield
10/21/2008		3.00		X	3.05
EVERY 12 MONTHS AND AT WITHDRAWAL					
The method of interest payment will be					
BY ADDING TO PRINCIPAL					
YOU WILL AUTOMATICALLY RENEW YOUR TIME ACCOUNT AT MATURITY UNLESS I NOTIFY YOU OTHERWISE.				Account Identification Number (104)	
The Bank is opening the above described Time Account for your deposit of				[REDACTED]	
SIX HUNDRED SEVENTY FIVE AND 0/100				\$ 675.00	
				**TRADE-A-RATE OPTION	

NOBLE T MURRAY FOR CENTRAL MONTANA CREMATORY, INC.  
PO BOX 272  
BOZEMAN MT 59452-0272

This is a receipt. It need not be presented at the time you submit payment from the Bank.  
WMTM

Note

40111

Central Montana Crematorium, Inc.  
 P.O. Box 882, 100 Cattail Drive, Lewistown, MT 59457  
 Telephone: (406)538-4400; Fax (406)538-4401

### Agreement for Cremation Services

NOTHING IN THIS INSTRUMENT SHALL BE CONSTRUED TO BE A FUNERAL  
 ARRANGEMENT, OR TO TAKE ANY OTHER ACTION IN VIOLATION OF THE TERMS OF  
 24.147.1503 OR THE STATUTES OF THE STATE OF MONTANA.

Date of Agreement: Oct 14, 2003

Name of Decedent: Noble MURRAY

Social Security no. [REDACTED]

Date of Death: \_\_\_\_\_

Cremation I.D. Tax Number \_\_\_\_\_

Charges:

Cremation Container: \_\_\_\_\_

Urn: \_\_\_\_\_

Other Container: \_\_\_\_\_

Cremation Charges: \_\_\_\_\_

Mileage: A1 \_\_\_\_\_ per mile:

Total Miles: \_\_\_\_\_

Rental of Facilities: \_\_\_\_\_

Mailing of Remains \_\_\_\_\_ (\$ 50.00)

Total All Charges

The undersigned authorizes the Central Montana Crematorium, Inc. to provide the above services at the cost set forth.

Signed: Legal J. Hammett Udelau

Date: \_\_\_\_\_

Address: Box 211

City: Helena

State: MT

59457

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Central Montana Crematorium, Inc. agrees to provide the services and merchandise indicated in this Agreement.

Central Montana Crematorium, Inc.

By: Lee [Signature]

(Office)

\* You the purchaser may cancel this transaction at any time prior to midnight of the fifth day after this transaction, provided no interment, substantial service or cremation goods have been provided hereunder, to cancel, deliver or mail written notice of intent to C.M.C.I. at P.O. Box 882 Lewistown, MT. 59457

For more information on State Cemetery, Cremation and Mortuary Regulations Contact:

Board of Funeral Service

P.O. Box 200513

Helena, Montana 59620-0513

(Telephone) (406) 241-2393

40111

## CENTRAL MONTANA CREMATORIUM, INC.

100 Cahill Drive  
Lawsonia, MT 59457  
(406) 538-4400Cremation Date 12/14/2003

## AUTHORIZATION FOR CREMATION AND DISPOSITION

NOTHING IN THIS INSTRUMENT SHALL BE CONSTRUED TO BE A FUNERAL ARRANGEMENT, OR TO TAKE ANY OTHER ACTION IN VIOLATION OF THE TERMS OF 24.147.1303 ARM OR THE STATUTES OF THE STATE OF MONTANA.

THE UNDERSIGNED, hereinafter referred to as the AUTHORIZED REPRESENTATIVE(S) HEREBY CERTIFY that they are the legal custodian(s) of the herein named Deceased (hereinafter referred to as the Deceased), having full legal authority to authorize the cremation, processing, and disposition of the cremated remains of the Deceased and hereby request and authorize CENTRAL MONTANA CREMATORIUM, INC. (hereinafter referred to as the "Crematorium or crematory", to take possession of and make arrangements for the cremation, processing and disposition of the cremated remains of

DATE OF BIRTH 5-4-19 14 Noble MURPHY

DATE OF DEATH \_\_\_\_\_

PLACE OF DEATH \_\_\_\_\_

in accordance with and subject to: (a) the terms and conditions set forth in the Authorization for Cremation and Disposition form; and (c) any applicable state or local laws, rules, laws, rules or regulations.

## DISPOSITION OF CREMATED REMAINS

- ( ) Return to VERA JEAN TRAMMELL - WALLACE within 10 days.  
 ( ) Ship cremated remains via Registered Mail to: \_\_\_\_\_  
 ( ) Deliver to: \_\_\_\_\_  
 ( ) Special Handling: \_\_\_\_\_

- A. The Authorized Representative(s) certify and represent the remains delivered for cremation are those of the Deceased and the Authorized Representative(s) further represent that they have the right to control the disposition of said remains.
- B. The remains of the Deceased will not be accepted for cremation unless they are received in a leak resistant, rigid cremation container. Central Montana Crematorium, Inc. reserves the right to accept or reject a cremation container constructed of noncombustible materials. Remains received in a noncombustible cremation container may be removed prior to cremation and placed in a combustible container; and Central Montana Crematorium, Inc. reserves the right to make disposition of the remains of such container at its sole discretion. In the event that a noncombustible cremation container is accepted for cremation, Central Montana Crematorium, Inc. reserves the right to make disposition of the remains of such container at its sole discretion. Central Montana Crematorium, Inc. is authorized to remove and discard handles or any other items attached to the cremation container which may cause damage to the cremation chamber.
- C. The Authorized Representative(s) understand that due to the nature of the cremation process certain materials, including holy pictures, dental bridgework, dental fillings or personal articles accompanying the remains will either be destroyed or will not be recoverable. Accordingly, the Authorized Representative(s) represent and warrant to Central Montana Crematorium, Inc. that such materials: (i) have been removed from the remains (ii) may be removed from the remains and disposed of by Central Montana Crematorium, Inc. unless otherwise directed in writing by the Authorized Representative(s); or (iii) they be destroyed by the cremation process.
- D. Mechanical devices implanted in the Deceased may create a hazardous condition when placed in a cremation chamber. CENTRAL MONTANA CREMATORIUM, INC. will not, therefore, cremate any human remains which contain any type of implanted mechanical device. THE AUTHORIZED REPRESENTATIVE(S) CERTIFY THAT THE REMAINS OF THE DECEASED ( DO / DO NOT CONTAIN ANY TYPE OF IMPLANTED MECHANICAL DEVICE OR RADIOLOGICAL IMPLANT. In the event the remains of the Deceased do not contain such a device, the Authorized Representative(s) hereby warrants and instructs CENTRAL MONTANA CREMATORIUM, INC., its agents, and employees, to contact the appropriate persons and secure approval of any and all mechanical devices from the remains prior to commencement of the cremation process. The Authorized Representative(s) also agree to indemnify CENTRAL MONTANA CREMATORIUM, INC., its affiliates, and their agents and employees, against loss from any and all claims, demands or damages which may be made or declared against it or them by reason of the failure of the Authorized Representative(s) to fully disclose the existence of such implanted mechanical device(s). The following list describes all existing devices (including all mechanical and prosthetic devices which may be implanted in or attached to the Deceased) to be removed from the remains of the Deceased and disposed of as instructed below:

Description: \_\_\_\_\_

## Disposition:

- If no instruction for disposition of a cremated device is given herein, CENTRAL MONTANA CREMATORIUM, INC. is authorized to dispose of such an implement of its sole discretion.
- (Cremated remains contain primarily bone fragments, which are refused to permit their placement in an urn or other suitable container. Unless a suitable container is purchased for the cremated remains of the deceased, the Crematory will place such remains in a container which is designed for short-term use and not recommended for any type of shipment. In the event the capacity of the urn or other container is insufficient to accommodate all of the cremated remains of the Deceased, the Crematory is hereby authorized to make disposition of the remaining cremated remains of the Deceased at its discretion, unless otherwise instructed in writing by the Authorized Representative(s). The Crematory is specifically authorized to commingle any remaining cremated remains of the deceased in a common receptacle for disposition. The Authorized Representative(s) understand that even with the exercise of reasonable care and the use of its best efforts, the Crematory may not be able to recover all the particles of the cremated remains of the deceased and some particles may inadvertently become commingled with particles of other cremated remains. The Authorized Representative(s) hereby expressly authorize the incidental or inadvertent commingling of particles of cremated remains of the deceased with particles of other cremated remains remaining in the cremation chamber and/or other devices utilized to reduce the cremated remains and the disposition of any remaining particles of cremated remains of the deceased at the sole discretion of the Crematory. Initial:
- F. The Authorized Representative(s) agree that if permanent arrangements for disposition of the cremated remains are to be carried out by the Authorized Representative(s) or their duly authorized agent, and such arrangements have not been completed within 120 days after the date of the availability of such cremated remains for final disposition, CENTRAL MONTANA CREMATORIUM, INC. is authorized and directed to dispose of the cremated remains in any manner it may deem suitable, either (i) 120 days after such written notification, if written notice is required, or (ii) 120 days after the availability of such cremated remains for final disposition if written notice is not required. Initial:
- G. The obligation of CENTRAL MONTANA CREMATORIUM, INC. shall be limited to the cremation of the remains of the Deceased and the disposition of the cremated remains as directed herein. The Authorized Representative(s) agree to release and hold CENTRAL MONTANA CREMATORIUM, INC., its affiliates and their agents, employees and designees, harmless from any and all loss, damages, liability or causes of action (including Attorney fees and expenses of litigation) in connection with the cremation and disposition of the cremated remains as authorized herein or the failure of the Authorized Representative(s) to identify properly the remains of the Deceased or take possession of or make permanent arrangements for the disposition of such remains. No warranties expressed or implied are made and damages shall be limited to the refund of the cremation fee paid hereunder.

## SIGNATURE OF PERSON(S) AUTHORIZING CREMATION AND DISPOSITION

SIGNATURE: TERA J. TRAVIS PRINT NAME: TERA J. TRAVIS

AUTHORIZED REPRESENTATIVE

RELATIONSHIP TO DECEASED: SISTER

ADDRESS: Box 271 Hobson, MT 59026-0271

WAS CREMATION PURCHASED BEFORE NEED: YES ( ) NO ( )

CREMATION FEE \$ 675.00

CREMATION REMAINS RELEASED TO: TERA J. TRAVIS

RELATIONSHIP: SISTER

FOR: CENTRAL MONTANA CREMATORIUM, INC. DATE: 10/16/2003

Cecilia Haggard Sr.



James E. Harris, President

July 7, 2004

Board of Funeral Service  
Bruce Duenkler  
PO Box 200513  
Helena, MT 59620-0513

RECEIVED

JUL 08 2004

HCLB

Re: Central Montana Crematorium

You have a complaint on file dated February 23, 2004. Since that time, several issues have transpired. I am enclosing a copy of a newspaper advertisement in the form of a letter which was published in the Lewistown News Argus.

I am enclosing a tape of a program which was aired on KXLO radio on May 26, 2004; and a tape of radio ads encouraging people to call the crematorium to pre-arrange and find out about their options/choices.

In regards to the taped interview, Mr. Spoja states that cremations are being sent out of town and that the families believe their loved ones are being cremated in Lewistown. This is not true. The cremation authorizations clearly state the name of the crematory being used; and I in fact have had several families request that the local crematory not be used.

I started using the Central Montana Crematorium in October upon its opening... under the premise that Mr. Spoja stated that he would work with both local funeral homes. However, upon his initiation of advertising direct cremations on February 15, 2004, he became a competitor.

As in my complaint, I feel both Mr. Spoja and Mr. Gallagher are in violation of 24.147.302(5) as pre-arrangement and/or pre-paid funeral services should be made with a licensed mortician. In addition, 24.107.302(9 & 11) defines funeral services and funeral providers as requiring a mortician's license and mortuary license. Also, 24.147.1503(1) clearly states that the sale of at-need, pre-need and prepaid funeral arrangements require a duly licensed mortician or funeral director.

It is my professional opinion that with the recent advertising, Mr. Spoja and Mr. Gallagher are continuing to put themselves out to be funeral directors by encouraging families to contact Central Montana Crematorium, Inc. to see what options they offer.

Thank you again for your attention in this matter.

Sincerely,

*James E. Harris*  
James E. Harris

1 Lon Mitchell  
2 Legal Counsel  
3 Department of Labor and Industry  
4 301 S. Park  
5 P.O. Box 200513  
6 Helena, Montana 59620-0513  
7 (406) 841-2318

RECEIVED

DEC 28 2004

UGRIN, ALEXANDER  
ZADICK & HIGGINS, P.C.

BEFORE THE BOARD OF FUNERAL SERVICE  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

8 IN THE MATTER OF DISCIPLINARY )  
9 TREATMENT OF THE LICENSE OF )  
10 WILLIAM A. SPOJA, JR., )  
11 LICENSE NO. 749 CMO, A )  
12 LICENSED CREMATORY OPERATOR)

Docket No. CC-05-0097-FNR

13 NOTICE OF PROPOSED BOARD ACTION AND OPPORTUNITY FOR HEARING

14 TO: Mr. William A. Spoja, Jr.  
15 C/O Neil Ugrin, Esq.  
16 Ugrin, Alexander, Zadick & Higgins, P.C.  
17 P.O. Box 1746  
18 Great Falls, Montana 59403-1746

19 PLEASE TAKE NOTICE THAT:

20 The Screening Panel of the Board of Funeral Service has found reasonable cause to  
21 believe that you have committed acts and/or omissions that authorize the Board to take  
22 disciplinary action against your license under the provisions of sections 37-1-131, 37-1-307  
23 and 37-1-316, MCA.

24 REASONS FOR THIS ACTION

25 The Screening Panel has considered information presented by the Department of Labor  
26 and Industry in making its reasonable cause finding(s). The following fact assertions and  
27 conclusions summarize the allegations upon which the Screening Panel has authorized the  
28 issuance of a Notice of Proposed Board Action and Opportunity for Hearing.

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30 NOTICE OF PROPOSED BOARD ACTION AND OPPORTUNITY FOR HEARING

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**FACT ASSERTIONS**

1. At all times relevant to this proceeding, licensee has been licensed as a Crematory Operator, holding Montana license number 749.

2. On or about March 31, 2004 a formal Complaint was received from Richard Brown alleging Mr. Spojka is providing services to the public that require a licensed mortician and licensed mortuary.

3. Pursuant to normal procedure, this complaint and formal response was presented to the Screening Panel of the Board of Funeral Service which directed that a formal investigation be conducted.

7. Upon completion of that investigation, the results were presented to the Screening Panel of the Board which found reasonable cause to believe specific violations of the following laws and rules may have occurred:

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**CONCLUSIONS OF LAW**

1. Section 37-1-316(18), MCA by "conduct that does not meet the generally accepted standards of practice..."

2. Section 37-19-101(28)(a), MCA in that "Mortuary means a place of business licensed by the board, located in a building or portion of a building having a specific street address or location, containing but not limited to a suitable room for viewing or visitation and a preparation room, and devoted exclusively to activities that are related to the preparation and arrangements for funerals, transportation, burial, or other disposition of dead human bodies."

3. Section 37-19-101(28)(b), MCA in that "The term includes conducting activities from a place of business referred to in subsection (28)(a) that are incidental, convenient, or related to the preparation of funeral or memorial services or rites or the transportation, burial, cremation, or other disposition of dead human bodies in any area where those activities may be conducted."

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## STATEMENT OF RIGHTS

You are entitled to a hearing, promptly instituted and determined, as provided for by the Montana Administrative Procedure Act (§ 2-4-601, MCA, and following, including 2-4-631, MCA) and by § 37-1-121(1), MCA. You have a right to be represented by an attorney at such hearing and during related proceedings.

If you want to have a hearing and to resist the proposed action under the jurisdiction of the Board of Funeral Service you must so advise Lisa Addington, Licensing Bureau Chief, Health Services Division, Department of Labor and Industry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, in writing. Your request must be received in the offices of the Department within twenty (20) days after your receipt of this notice.

### POSSIBLE SANCTIONS TO BE IMPOSED

Section 37-1-312.MCA sets forth potential sanctions. They are as follows:

- (a) revocation of license;
- (b) suspension of the license for a fixed or indefinite term;
- (c) restriction or limitation of the practice;
- (d) satisfactory completion of a specific program of remedial education or treatment;
- (e) monitoring of the practice by a supervisor approved by the disciplining authority;
- (f) censure or reprimand, either public or private;
- (g) compliance with conditions of probation for a designated period of time;
- (h) payment of a fine not to exceed \$1,000 for each violation. Fines must be deposited in the state general fund;
- (i) denial of a license application;
- (j) refund of costs and fees billed to and collected from a consumer.

### POSSIBILITY OF DEFAULT

*Failure to give notice or to advise of your request for a hearing within the time specified will result in the entry of a default order imposing any sanction or sanctions identified in § 37-1-312, MCA without additional prior notice to you.*

//

//

1 DATED this 28<sup>th</sup> day of December, 2004..

2  
3 Lon Mitchell  
4 Lon Mitchell  
5 Legal Counsel  
6 Department of Labor and Industry  
7  
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10

11 **CERTIFICATE OF SERVICE**

12 I hereby certify that on the 27<sup>th</sup> day of December, 2004, I served a true and accurate  
13 copy of the foregoing Notice of Proposed Board Action and Opportunity for Hearing, by  
14 certified mail, certified number 7003 1010 0000 9279 3927, postage  
15 prepaid, upon the Licensee, addressed as follows:

16 Mr. William A. Spoja, Jr.  
17 C/O Neil Ugrin, Esq.  
18 Ugrin, alexander, Zadick & Higgins, P.C.  
19 P.O. Box 1746  
20 Great Falls, Montana 59403-1746  
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Dusan C. Peters

1 Lon Mitchell  
Legal Counsel  
2 Department of Labor and Industry  
301 S. Park  
3 P.O. Box 200513  
Helena, Montana 59620-0513  
4 (406) 841-2318

RECEIVED

DEC 28 2004

UGRIN, ALEXANDER  
ZADICK & HIGGINS, P.C.

5 BEFORE THE BOARD OF FUNERAL SERVICE  
6 DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

7  
8 IN THE MATTER OF DISCIPLINARY )  
TREATMENT OF THE LICENSE OF )  
9 WILLIAM A. SPOJA, JR., )  
LICENSE NO. 749 CMO, A )  
10 LICENSED CREMATORY OPERATOR)

Docket No. CC-05-0099-FNR

11 NOTICE OF PROPOSED BOARD ACTION AND OPPORTUNITY FOR HEARING

12 TO: Mr. William A. Spoja, Jr.  
C/O Neil Ugrin, Esq.  
13 Ugrin, Alexander, Zadick & Higgins, P.C.  
P.O. Box 1746  
14 Great Falls, Montana 59403-1746

15 PLEASE TAKE NOTICE THAT:

16 The Screening Panel of the Board of Funeral Service has found reasonable cause to  
17 believe that you have committed acts and/or omissions that authorize the Board to take  
18 disciplinary action against your license under the provisions of sections 37-1-131, 37-1-307  
19 and 37-1-316, MCA.

20 REASONS FOR THIS ACTION

21 The Screening Panel has considered information presented by the Department of Labor  
22 and Industry in making its reasonable cause finding(s). The following fact assertions and  
23 conclusions summarize the allegations upon which the Screening Panel has authorized the  
24 issuance of a Notice of Proposed Board Action and Opportunity for Hearing.

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26 NOTICE OF PROPOSED BOARD ACTION AND OPPORTUNITY FOR HEARING

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## FACT ASSERTIONS

1. At all times relevant to this proceeding, licensee has been licensed as a Crematory Operator, holding Montana license number 749.

2. On or about March 1, 2004 a formal Complaint was received from James Harris alleging Mr. Spoja is providing at-need funeral arrangements, pre-need funeral arrangements and pre-need funeral agreements without being properly licensed as a mortician or funeral director.

3. Pursuant to normal procedure, this complaint and formal response was presented to the Screening Panel of the Board of Funeral Service which directed that a formal investigation be conducted.

4. Upon completion of that investigation, the results were presented to the Screening Panel of the Board which found reasonable cause to believe specific violations of the following laws and rules may have occurred:

## CONCLUSIONS OF LAW

1. Section 37-1-316(18), MCA by "conduct that does not meet the generally accepted standards of practice..."

2. Section 37-19-101(1), MCA in that "Arrangements includes:

- (a) planning the details of funeral service, including time of service, type of service, and, if requested, acquiring the services of clergy;
- (b) obtaining the necessary information for filing death certificates and obtaining burial-transit permits;
- (c) comparing or discussing prices, including merchandise prices and financial arrangements; and
- (d) providing for onsite direction and coordination of participants and onsite direction, coordination, and facilitation at funeral, graveside, or memorial services or rites.

3. ARM 24.147.1503(1), in that "No person, firm or corporation shall sell or offer to sell, or make or offer to make at-need funeral arrangements, pre-need funeral arrangements or prepaid funeral agreements, unless that person is a duly licensed mortician or funeral

1 director.

2 4. ARM 24.147.302(9), in that "Funeral services means those services typically  
3 provided in connection with a funeral, or the final disposition of human remains, including, but  
4 not limited to, funeral directing services, embalming services, care of human remains,  
5 preparation of human remains for final disposition, transportation of human remains, use of  
6 facilities or equipment for viewing human remains, connection with a funeral or the disposition  
7 of human remains, coordinating or conducting funeral rites or ceremonies and similar funeral  
8 or burial services."

9 5. ARM 24.147.302(10), in that "Prepaid funeral services means funeral services  
10 which are purchased in advance of need and which will not be provided or delivered until the  
11 death of the intended funeral recipient named in a prepaid funeral agreement. Prepaid funeral  
12 services shall not mean the sale of services incidental to the provision of interment spaces  
13 offered or sold by a cemetery company."

#### 14 STATEMENT OF RIGHTS

15 You are entitled to a hearing, promptly instituted and determined, as provided for by  
16 the Montana Administrative Procedure Act (§ 2-4-601, MCA, and following, including 2-4-  
17 631, MCA) and by § 37-1-121(1), MCA. You have a right to be represented by an attorney at  
18 such hearing and during related proceedings.

19 If you want to have a hearing and to resist the proposed action under the jurisdiction of  
20 the Board of Funeral Service you must so advise Lisa Addington, Licensing Bureau Chief,  
21 Health Services Division, Department of Labor and Industry, 301 South Park Avenue, P.O.  
22 Box 200513, Helena, Montana 59620-0513, in writing. Your request must be received in the  
23 offices of the Department within twenty (20) days after your receipt of this notice.

#### 24 POSSIBLE SANCTIONS TO BE IMPOSED

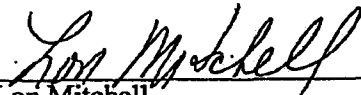
25 Section 37-1-312.MCA sets forth potential sanctions. They are as follows:

- 1 (a) revocation of license;  
2 (b) suspension of the license for a fixed or indefinite term;  
3 (c) restriction or limitation of the practice;  
4 (d) satisfactory completion of a specific program of remedial education or  
5 treatment;  
6 (e) monitoring of the practice by a supervisor approved by the disciplining  
7 authority;  
8 (f) censure or reprimand, either public or private;  
9 (g) compliance with conditions of probation for a designated period of time;  
10 (h) payment of a fine not to exceed \$1,000 for each violation. Fines must be  
11 deposited in the state general fund;  
12 (i) denial of a license application;  
13 (j) refund of costs and fees billed to and collected from a consumer.

14 **POSSIBILITY OF DEFAULT**

15 *Failure to give notice or to advise of your request for a hearing within the time*  
16 *specified will result in the entry of a default order imposing any sanction or sanctions*  
17 *identified in § 37-1-312, MCA without additional prior notice to you.*

18 DATED this 23<sup>rd</sup> day of December, 2004..

19   
20 \_\_\_\_\_  
21 Lon Mitchell  
22 Legal Counsel  
23 Department of Labor and Industry  
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CERTIFICATE OF SERVICE

I hereby certify that on the 27<sup>th</sup> day of December, 2004, I served a true and accurate copy of the foregoing Notice of Proposed Board Action and Opportunity for Hearing, by certified mail, certified number 7003 310 0000 8714 9985, postage prepaid, upon the Licensee, addressed as follows:

Mr. William A. Spoja, Jr.  
C/O Neil Ugrin, Esq.  
Ugrin, alexander, Zadick & Higgins, P.C.  
P.O. Box 1746  
Great Falls, Montana 59403-1746

Susan C. Peters



BEFORE THE BOARD OF FUNERAL SERVICE  
STATE OF MONTANA

IN THE MATTER OF DOCKET NOS. CC-05-0097-FNR, CC-05-0099-FNR,  
CC-05-0098-FNR AND CC-05-0100-FNR REGARDING:

THE DISCIPLINARY TREATMENT OF	) Case Nos. 1412-2005, 1413-2005
THE LICENSES OF WILLIAM A.	) 1410-2005, and 1411-2005
SPOJA, JR., License No. 749 CMO,	)
A Licensed Crematory Operator,	)
AND ALLEN C. GALLAGHER, SR.,	) PROPOSED
License No. 748 CMO,	) FINDINGS OF FACT;
A Licensed Crematory Operator.	) CONCLUSIONS OF LAW;
	) AND RECOMMENDED ORDER

\* \* \* \* \*

I. INTRODUCTION

These consolidated cases are before the hearing examiner for decision based upon stipulated facts submitted by the parties on cross motions for summary judgment. The parties have agreed that the sole issue to be decided by this tribunal is the question of whether licensees William A. Spoja and Allen C. Gallagher have been providing "at-need" funeral arrangements, "pre-need" funeral arrangements and/or "pre-need" funeral agreements without proper licensing. Having considered the stipulated facts as well as the parties' arguments with respect to the legal issues involved, the hearing examiner makes the following findings of fact, conclusions of law, and proposed order.

II. STIPULATED FACTS

1. William A. Spoja and Allen C. Gallagher (licensees) are licensed crematory operators in the State of Montana. Together, they operate Central Montana Crematorium in Lewistown, Montana, in operation since October 2003.

2. In contracting with representatives for the cremation of decedents, the crematorium uses two contracts, one entitled "Authorization for Cremation Services and Disposition" and the other entitled "Agreement for Cremation Services." Exhibits A and B.

3. The crematorium has a separate room where interested parties may view the cremation receptacle in which human remains have been placed. The remains are identified by a tag on the cremation receptacle.



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4. The crematorium provides no services other than the cremation itself.
  5. No money is paid to the crematorium pursuant to the above described agreements until after death.
  6. It is the practice and philosophy of the crematorium that, upon death, the wishes of the family of the decedent shall control.
  7. James Harris and Richard Brown, each owners and operators of their own funeral businesses in Lewistown, Montana, filed the complaints that resulted in the instant case before the Montana Board of Funeral Services. Brown is a member of the Montana Board of Funeral Services.
  8. Harris' complaint, filed on March 1, 2004, alleges that the licensees have been providing at-need funeral arrangements and pre-need funeral arrangements without being properly licensed in Montana as either a mortician or funeral director.
  9. On July 12, 2004, an investigator for the Montana Funeral Board completed a report of investigation, which is incorporated into these findings of facts by this reference. Exhibit C.
  10. Pursuant to standard procedure, the screening panel of the Montana Board of Funeral Service found reasonable cause to believe that Montana Code Annotated §§ 37-1-316(18), 37-19-101(1) and 37-19-101(28)(a) and (b) and Admin. R. Mont. 24.147.1503(1), 24.147.302(9) and 24.147.302(10) may have been violated.
  11. The crematorium has the right to transport a dead body, so long as proper legal authorization is given. In addition, people have a right to witness cremation provided they are only viewing the cremation receptacle.

### III. DISCUSSION

#### A. *Propriety of Summary Judgment in Administrative Proceedings.*

Summary judgment is an appropriate method of dispute resolution in administrative proceedings where the requisites for summary judgment otherwise exist. *Matter of Peila* (1991), 249 Mont. 272, 815 P.2d 139. Summary judgment is appropriate where "the pleadings . . . and admissions on file . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), Mont. R. Civ. P.

The party seeking summary judgment has the initial burden of establishing the absence of any genuine issue of material fact and entitlement to judgment as a matter of law. Once the moving party meets this burden, the burden then shifts to the party opposing the motion to establish otherwise by more than mere denial or speculation. *Ravalli County Bank v. Gasvoda* (1992), 253 Mont. 399, 883 P.2d 1042. Reasonable inferences from the proof must be drawn in favor of the party opposing summary judgment. *Sherrad v. Prewett* (2001), 306 Mont. 511, 36 P.3d 378.

In this matter, the parties do not dispute any facts necessary to determine whether the licensees are engaged in making funeral arrangements and therefore need to be licensed either as funeral directors or morticians. As there is no dispute of fact, the only question here is one of the application of the applicable statute to the facts. Summary judgment is appropriate in this proceeding.

*B. A Licensed Crematorium Operator Does Not Violate Licensing Requirements For Funeral Directors By Entering Into A Pre-need Cremation Authorization With An Authorized Agent.*

Montana prohibits funeral directing by anyone who does not hold a funeral director's or mortician's license. Mont. Code Ann. § 37-19-301. "Funeral directing" includes (1) supervising funerals; (2) making of pre-need or at-need contractual arrangements for funerals; (3) preparing dead bodies for funerals; (4) maintaining a mortuary for preparation, disposition or care of dead bodies and (5) representing to the public that one is a funeral director. Mont. Code Ann. § 37-19-101(2). The applicable administrative rule provides that "No person, firm or corporation shall sell or offer to sell, or make or offer to make at-need funeral arrangements, pre-need funeral arrangements or prepaid funeral agreements, unless that person is a duly licensed mortician or funeral director." Admin. R. Mont. 24.147.1503(1).

Mont. Code Ann. § 37-19-101(1) defines the term "arrangements" to include: (a) planning the details of funeral service, including time of service, type of service, and, if requested, acquiring the services of clergy; (b) obtaining the necessary information for filing death certificates; (c) comparing or discussing prices, including merchandise prices and financial arrangements; and (d) providing for onsite direction and coordination of participants and onsite direction, coordination, and facilitation at funeral, grave side, or memorial services, and facilitation at funeral, grave side, or memorial services or rites. Mont. Code Ann. § 37-19-101(2) defines "at-need" arrangements as arrangements made by an authorized person on behalf of the deceased.

A person or other entity that erects, maintains, or provides the necessary appliances for the cremation of human remains and conducts cremations must have a crematory license. Mont. Code Ann. § 37-19-702(1). A person in charge of a

crematory must have a crematory operator's license. Mont. Code Ann. § 39-19-702(3). A person who performs cremations must have a crematory operator's license. Mont. Code Ann. § 39-19-702(4).

Montana permits pre-need cremation authorizations to be made between crematories and authorizing agents. Mont. Code Ann. § 37-19-708(1). Pre-need cremation authorizations can be made with a cemetery, funeral establishment, crematory, or any other party. Such authorizations must specify the ultimate disposition of the cremated remains, be signed by the authorizing agent, and meet other requirements established by the board. *Id.* "Cremation" is defined as "the technical process, using heat, that reduces human remains to bone fragments." Mont. Code Ann. § 37-19-101(11).

The rules of statutory construction require that the language of a statute be construed according to its plain meaning. *Lovell v. St. Comp. Mut. Ins. Fund* (1993), 260 Mont. 279, 860 P.2d 95. Where the language is unambiguous, courts must look at the plain meaning of the statute and may not go further and apply other means of interpretation. *Tongue River Electric Co-op v. Montana Power Company* (1981), 195 Mont. 511, 636 P.2d 862. A court must find legislative intent from the plain meaning of the language by reasonably and logically interpreting the statute as a whole without omitting or inserting anything or determining intent from a reading of only part of the statute. *Gaub v. Milbank Ins. Co.* (1986), 220 Mont. 424, 715 P.2d 443. Statutes must be read in their entirety and legislative intent may not be gained from the wording of one particular section or sentence but only from consideration of the whole. A court's duty is to interpret individual sections of the act in such a manner as to insure coordination with the other sections of the act. *State v. Meador*, (1979), 185 Mont. 32, 601 P.2d 386.

The licensees contend that the statutory requirements regarding pre-need and at-need funeral arrangements have no application to operators of crematoriums. Those statutory requirements do, however, have application to this case in this sense: the statutory prescriptions contained in Title 39, Chapter 19 provide a comprehensive regulatory scheme that regulates funeral directing, mortuaries and crematoriums. The legislature's intent to regulate all three fields comprehensively is evident not only in the plain language of the statutes, but also in the manner in which the statute was promulgated.

In construing a particular statute, all acts relating to the same subject or having the same general purpose are read as together constituting one law regulating that subject. *Ewald v. Certain Intoxicating Liquors*, (1924), 71 Mont. 79, 227 Pac. 472. The sections of the statute relating to crematoriums utilize definitions found in Montana Code Annotated § 39-19-101. Of particular importance to the instant case is the pre-

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need cremation statute permitting a pre-need arrangement only for a "cremation," a term specifically defined in Montana Code Annotated § 39-19-101.

Moreover, the definitions contained in Montana Code Annotated § 39-19-101 and the portion of Title 37, Chapter 19 authorizing and regulating crematoriums were promulgated simultaneously in the same senate bill by the 1993 legislature. *See*, Chapter 38, L. 1993, Secs. 1 through 10. Because the definitional section of Montana Code Annotated § 39-19-101 and the sections relating to regulation of crematoriums were promulgated at the same time, it must be presumed that the legislature intended to enact a comprehensive regulatory scheme that would encompass funeral directors, mortuaries, and crematoriums.

Because the statute is comprehensive, the licensees' conduct in this case must be measured not only against the requirements applicable to crematoriums, but also against the statutory requirements for at-need and pre-need funeral arrangements in order to ensure that the licensees' conduct does not exceed the scope of their permissible activity under their crematory license. Thus, this tribunal must consider what licensed funeral directors and morticians can properly do regarding pre-need and at-need funeral arrangements to determine the scope of permissible pre-need cremation authorizations.

The fact that the legislature specifically permitted pre-need cremation authorizations within the comprehensive regulatory scheme of Title 37, Chapter 19, compels the hearing examiner to agree with the licensees' argument that such agreements may be made between private persons and a crematorium. The only pre-need arrangement that can be made between an authorized agent and a crematorium is one that provides for the process of cremation, *i.e.*, reducing human remains to bone fragments, as described in Mont. Code Ann. § 39-19-101(11). Nonetheless, the legislature intended that private persons could contract directly with a crematorium to complete the cremation process without involving a licensed funeral director or mortician involved in the process. Mont. Code Ann. § 39-19-701 expressly recognizes the right of individuals to seek cremation for "themselves or a loved one." Mont. Code Ann. § 39-19-708 authorizes a crematorium to enter into a pre-need cremation arrangement with "a cemetery, funeral establishment, crematory, or any other party" (emphasis added).

A crematorium can indeed enter into a pre-need agreement for cremation services with any person having the legal right to determine disposition of the body, provided that pre-need agreement does not go beyond an agreement for cremation. Anything beyond the process of the cremation, *i.e.*, directing or providing a memorial service or providing a place for the family to conduct its own service would, in all

likelihood, amount to "funeral directing" or funeral arranging and thus require the licensees to obtain a funeral director's or mortician's license.

The licensees maintain that they are offering nothing more than pre-need cremation services that are authorized by statute. BSD maintains that the licensees are in fact offering pre-need funeral arrangements and therefore must be licensed as either morticians or funeral directors. To determine whether the licensees needed funeral or mortician licenses under the stipulated facts of this case is a simple matter of comparing the conduct in this case to the statutory strictures. If the licensees have done nothing more than enter into a pre-need arrangement for cremation with a party having the legal right to enter into such an agreement, there is no need for the licensees to be licensed either as funeral directors or morticians.

The stipulated facts of this case show that the parties agree that the licensees had the right to transport the body of the decedent to the crematorium. The stipulated facts further state that the crematorium provides no services of any kind other than the cremation itself. The authorizations utilized by the crematorium are consistent with this stipulation and reinforce the finding that the crematorium engaged in nothing but cremation.

Construing Title 39, Chapter 19 Subpart 7 in conjunction with the overriding comprehensive regulation demonstrated in the language of Title 39, Chapter 19, it is plainly evident that the licensees were not engaged in any conduct under the stipulated facts that would have required them to be licensed either as funeral directors or morticians. They entered into a pre-need cremation agreement with a person authorized to do so and they provided no other services. Their crematorium license authorizes them to transport the dead body to the crematorium and to cremate the dead body. No violation has been proven in this case.

#### IV. CONCLUSIONS OF LAW

1. Title 37, Chapter 19 does not require properly licensed crematorium operators or technicians to be licensed as funeral directors or morticians in order to enter into a pre-need cremation agreement.

2. A pre-need cremation agreement which involves anything more than the cremation process (such as a set up where a crematorium provides services or provides a place for family members to hold services) would exceed the scope of the statutorily authorized conduct of crematorium operators and would require a funeral director's or mortician's license.

3. The stipulated facts in this case fail to show that the licensees engaged in anything other than a pre-need cremation authorization. Therefore, no violation has been proven under the stipulated facts of this case and summary judgment in favor of the licensees is appropriate.

4. If the board decides by a preponderance of the evidence that a licensee has not violated a provision of Title 37, Chapter 1, Part 3, Montana Code Annotated, then "the department shall prepare and serve the board's findings of fact and an order of dismissal of the charges." Mont. Code Ann. § 37-1-311.

5. Because the preponderance of the evidence does not establish that the licensees' conduct violated Title 37, Chapter 1, Part 3, Montana Code Annotated, dismissal of the charges is required.

#### V. RECOMMENDED ORDER

Based on the foregoing, it is recommended that summary judgment be entered in the favor of licensees William Spoja and Allen Gallagher and that the charges in this case be dismissed.

DATED this 4th day of May, 2006.

DEPARTMENT OF LABOR & INDUSTRY  
HEARINGS BUREAU

By: /s/ GREGORY L. HANCHETT  
GREGORY L. HANCHETT  
Hearing Examiner

**BOARD OF FUNERAL SERVICE  
ADJUDICATION PANEL  
301 SOUTH PARK 2ND FLOOR ROOM 226  
JULY 11, 2006  
MINUTES  
OPEN  
8:30 A.M.**

**MEMBERS PRESENT:**

Douglas Lowry, Chair  
Thomas Meeks  
Niles Nelson

**DLI STAFF PRESENT:**

Cristina Medina, Compliance Specialist  
Jack Atkins, Board Counsel  
Lon Mitchell, Department Counsel

**OTHERS PRESENT:**

List Available Upon Request.

**CALL TO ORDER/QUORUM:**

The meeting was called to order at 8:30 a.m. and a quorum was present.

**PUBLIC COMMENT STATEMENT/PRIVACY STATEMENT:**

Mr. Lowry opened the meeting for public comment. Hearing none, Mr. Lowry preceded to the next agenda item.

**APPROVAL OF AGENDA:**

Mr. Nelson made the motion to approve the agenda. Mr. Meeks seconded the motion. The motion passed.

**APPROVAL OF SEPTEMBER 15, 2005 MINUTES:**

Mr. Nelson made the motion to approve the minutes. Mr. Meeks seconded the motion. The motion passed.

**ADJUDICATION PANEL:**

**COMBINED CC-05-0097-FNR (2004-10-FNR), CC-05-0098-FNR (2004-09-FNR & 2004-11-FNR), CC-05-0099-FNR (2004-07-FNR) & CC-05-0100-FNR (2004-08-FNR) SPOJA AND GALLAGHER**

Please refer to the transcript prepared by the court reporter.

(A copy of the transcript can be obtained by notifying Lesofski & Walstad Court Reporting 406-443-2010.)

**ADJOURNMENT:**

The meeting adjourned at 8:40 a.m.





BOARD OF FUNERAL SERVICE  
ADJUDICATION PANEL  
301 SOUTH PARK 2ND FLOOR ROOM 226  
JULY 11, 2006  
OPEN MEETING  
8:30 A.M.

\* \* \* \* \*

APPEARANCES:

DOUGLAS LOWRY, CHAIRPERSON

JACK ATKINS, BOARD COUNSEL

THOMAS MEEKS, CREMATORY REPRESENTATIVE

NILES NELSON, MORTICIAN

1 CHAIRPERSON: Okay, it's a little past 8:30. I  
2 think we will call this meeting of the Adjudication Board  
3 of the Funeral Services to order.

4 I'll introduce the adjudication board. We have  
5 Niles Nelson and Tom Meeks. I'm Doug Lowry, and our  
6 counsel is Jack Atkins. And we have a quorum.

7 I'm going to read a little public comment  
8 statement here:

9 According to 2-3-103, "Each agency shall develop  
10 procedures for permitting and encouraging the public to  
11 participate in agency decisions that are of significant  
12 interest to the public. The procedures must ensure  
13 adequate notice and assist public participation before a  
14 final agency action is taken that is of significant  
15 interest to the public.

16 "The agenda for a meeting, as defined in 2-3-202,  
17 must include an item allowing public comment on any public  
18 matter that is not on the agenda of the meeting, and it is  
19 within the jurisdiction of the agency conducting the  
20 meeting."

21 The adjudication panel will hear any public  
22 comment not on the agenda at this time.

23 Does anybody have anything that's not on our  
24 agenda at this time?

25 Okay. We will have the review of the agenda.

1 Does anybody have anything different for the agenda? If  
2 not, I would ask for a motion to approve the agenda.

3 MR. NELSON: So moved.

4 CHAIRPERSON: Has everybody had a chance to look  
5 at the minutes from September 15?

6 MS. MEDINA: Mr. Chairman, we need a second on  
7 the motion.

8 MR. MEEKS: I'll second.

9 CHAIRPERSON: All in favor?

10 MR. NELSON: Aye.

11 CHAIRPERSON: Minutes. Did everybody get a  
12 chance to look at the minutes? Approval of the minutes?

13 MR. NELSON: I so move.

14 MR. MEEKS: I second it.

15 CHAIRPERSON: All in favor?

16 ("Aye" responses.)

17 CHAIRPERSON: Minutes are approved.

18 Okay, on the agenda today, the only item is a  
19 complaint CC-05-0097-FNR (2004-10-FNR), CC-05-0098-FNR  
20 (2004-09-FNR & 2004-11-FNR), CC-05-0099-FNR &  
21 CC-05-0100-FNR (2004-08-FNR), Spojka and Gallagher.

22 MR. NELSON: Mr. Chairman, at this time, as I  
23 served on the screening panel when the complaints relative  
24 to this were brought forth for investigation, according to  
25 proper procedure, I will recuse myself from any further

1 discussion or voting on this matter.

2 CHAIRPERSON: Okay. We will excuse you. Thank  
3 you, Niles.

4 Okay. Both Tom and I have reviewed this 3-ring  
5 binder, and there's a lot of information in there, a lot of  
6 testimony, a lot of back and forth, and we have had the  
7 hearing officer's report. And so now, we have to act on  
8 what we have.

9 So, Tom, do you have any comments to make on this  
10 report?

11 MR. MEEKS: No, not at this time.

12 CHAIRPERSON: I have read it. I have been on  
13 this Funeral Board for 13 years, and I feel that there's  
14 some problems with our regulations. I think that  
15 Mr. Spojka and Mr. Gallagher are pushing the envelope a  
16 little past what should be done. But our hearing officer  
17 has done a hearing. He has had the hearing. He has given  
18 us his report, and he feels that this case should be  
19 dismissed.

20 I have reservations about that, and so I would  
21 like to ask our legal counsel, Jack Atkins, to explain his  
22 thoughts, his position.

23 MR. ATKINS: The ruling of the hearings examiner  
24 is pretty clear. The whole issue of whether or not  
25 Mr. Spojka and Mr. Gallagher are required to have some type

1 of license -- in addition to and including a license, was  
2 presented on stipulated facts. And it was those facts and  
3 those facts, only, which were used to decide the legal  
4 issue. There are comments and speculations contained in  
5 the Department's brief which were not before the hearings  
6 examiner and cannot be considered by the adjudication  
7 panel.

8           In the brief filed by the licensee, there was a  
9 comment made in there that the key to this case is it's  
10 decided on stipulated facts, and I have to agree  
11 100 percent with that. That's what this case was decided  
12 on. The law was applied to those facts, the hearings  
13 examiner found that indeed the legislature had an act of  
14 the statute that authorizes crematoriums to enter into  
15 pre-need arrangements. There is a copy of Central  
16 Montana's pre-need agreement in the record. There's no  
17 violation of the statute that he found.

18           It would be my recommendation to the adjudication  
19 panel that you adopt the findings of fact and conclusions  
20 of law and recommended order of the hearings examiner.

21           CHAIRPERSON: Okay. Thank you, Jack.

22           Tom, do you have any comments that you want to  
23 make or a motion of any kind or do you want to discuss it  
24 anymore?

25           MR. MEEKS: I'm just in agreement with you, Doug;

1 about pushing the envelope. But I guess, at this time, I  
2 will make a motion that we adopt the hearing examiner's  
3 ruling.

4 CHAIRPERSON: Stipulation?

5 MR. MEEKS: Stipulation.

6 CHAIRPERSON: Okay. Can I second this? I just  
7 wondered if I can second this if I am a Chairperson.

8 So I will second it.

9 MR. MEEKS: All right.

10 CHAIRPERSON: All in favor?

11 MR. MEEKS: Aye.

12 CHAIRPERSON: Aye. Okay, the case is dismissed  
13 and this meeting is adjourned.

14 (The hearing concluded at 8:40 a.m.)

15 \* \* \* \* \*

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RECEIVED

BEFORE THE BOARD OF FUNERAL SERVICE  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

AUG 1 2006

UGRIN, ALEXANDER,  
ZADICK & HIGGINS, P.C.

IN THE MATTER OF THE DISCIPLINARY ) Docket #'s CC-05-0097-FNR,  
TREATMENT OF THE LICENSES OF ) CC-05-00-0099-FNR, CC-05-0098-FNR,  
WILLIAM. A. SPOJA, JR. License No. 749 ) and CC-05-0100-FNR  
CMO, A Licensed Crematory Operator, )  
AND ALLEN C. GALLAGHER, SR., ) Hearings Bureau Case #'s 1412-2005,  
License No. 748 CMO, ) 1413-2005, 1410-2005, and 1411-2005  
A Licensed Crematory Operator. )

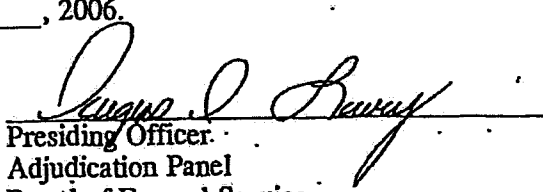
FINAL ORDER

Formal Notice(s) of Proposed Board Action and Opportunity for Hearing were issued in the above captioned matter, Request(s) for Hearing received, Hearing Examiner appointed, and subsequently joint Motions for Summary Judgment were submitted to the Hearing Examiner with an agreed statement of facts. The Hearing Examiner issued his Proposed Findings of Fact, Conclusions of law and Recommended Order on May 4, 2006. A Scheduling Order was issued and pursuant thereto formal Exceptions and requests for oral argument were filed. On July 11, 2006 the Adjudication Panel of the Board of Funeral Services convened.

NOW THEREFORE, after a review of the entire record and a full and complete consideration of the Exceptions filed, the Adjudication Panel of the Board of Funeral Service has determined that it will and does hereby fully incorporate by reference and adopt as its own the Hearing Examiner's Proposed Findings of Fact, Conclusions of Law and Recommended Order.

IT IS SO ORDERED.

DATED this 26 day of July, 2006.

  
Presiding Officer  
Adjudication Panel  
Board of Funeral Service

EXHIBIT



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NOTICE

YOU ARE HEREBY NOTIFIED that you have the right to request judicial review of this Final order by filing a petition for judicial review within thirty (30) days of service of this Final Order in a district court of the State of Montana, as provided in Section 2-4-702, MCA.

CERTIFICATE OF SERVICE

I hereby certify that on the 31 day of July, 2006, I served a true and correct copy of the foregoing Final Order by depositing a copy of the same in overnight mail via Federal Express, postage prepaid, addressed as follows:

Mr. William Spoja and Allen Gallagher  
C/O Mary K. Jaraczski, Esq.  
Ugrin, Alexander, Zadick & Higgins, P.C.  
#2 Railroad Sq., Ste. B  
Great Falls, Montana 59403-1746

AND upon Department Counsel:

Lon Mitchell, Esq.  
301 South Park Avenue  
Helena, Montana 59620-0513

Cristina Medina

**Central Montana Crematorium, Inc**  
License: 192 CRE  
P. O. Box 882  
100 Cattail Drive  
Telephone: (406) 538-4400  
Lewistown, Montana 59457

February 16, 2012

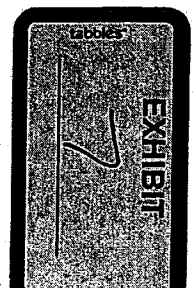
Department of Labor and Industry  
Business Standards Division  
State of Montana  
P. O. Box 200513  
Helena, MT 59620-0513

Attention: Cristina Medina

Re: Complaint #2012-FNR-LIC-54 and #2012-FNR-LIC-55

Each of the complaints filed in this matter are redundant and have been litigated on prior occasions. It is clear that the complainants in this matter are taking another run at cases they or those standing in for them have lost one or more times in the past. (For more complete information relative to the issues presented here, see the enclosed A) **PROPOSED FINDINGS OF FACT; CONCLUSIONS OF LAW AND RECOMMENDED ORDER** of Gregory L. Hanchett, Hearing Examiner for the Department of Labor & Industry Hearings Bureau, along with the B) Final Order, dated 26 July, 2006 executed by Douglas I. Lowry, Presiding Officer of the Adjudication Panel, Board of Funeral Service, both of which are annexed hereto and made a part hereof for all intents and purposes.)

*Res judicata* and *collateral estoppel* prohibit redundant litigation of the kind presented in these complaints. In addition, some of the portions of the complaints are so unclear as to be impossible to satisfactorily answer those parts. This results in a failure of *due process* for the respondents in these matters. The actions of the state in this matter are patently oppressive and subject to claims of malicious prosecution as well as section 1983 claims against the individual Board members. (For a more



complete discussion of the legal issues presented here, see the August 11, 2008 letter to M. Gene Allison from the Ugrin law firm. This letter is annexed hereto and made a part hereof for all intents and purposes.)

**To save time and frustration for everyone, we ask that Richard J. Brown recuse himself from any further involvement whatsoever in this matter due to the clear bias he has previously demonstrated against the Central Montana Crematorium, Inc. by repeatedly filing his own complaints, all of which have been dismissed (most with prejudice) and with no action being taken against the crematorium or its operators.**

1. We hereby waive any right to privacy and demand a public hearing that we might have in this matter and ask that the entire matter be conducted in a fully public forum. We do not believe we have violated any law or regulation nor have we violated the rights of any person or persons.
2. The complaint is so vague that it is impossible to prepare a defense of it. It fails to meet the requirements of clarity or due process.
3. It is not executed by any responsible person to permit response to one's accusers.
4. The first sub-paragraph of the nature of complaint section lists certain statutes of the state of Montana, but only alleges possible violations with no statement of violation.
5. The Second sub-paragraph of the nature of complaint section but lists no inappropriate behavior. It only alleges that there is some such behavior without identifying it.
6. The third sub-paragraph of the nature of complaint section list the following:

a. Removing pacemakers and other hazardous implants;

*This matter has been litigated before this board on a prior occasion; there has been no question for the past nine years that we are required by law and common sense to make certain that such implants are removed before cremation. This writer is unaware of any requirement under ARM 24.147.302 and related or successor sections which make pacemaker removal the exclusive province of a mortician.*

*Pacemaker removal has nothing to do with the art of mortuary science and therefore is not a logical extension of the prohibitions against a licensed crematorium operator operating within his or her licensure. This prohibition cannot be anything other than an illegal and unconstitutional protection of morticians' business interests at the expense of the public at large. This board is not permitted by law to take actions for its' members or the businesses it regulates and adheres to which impairs the ability of a second business and distinctly separate business to legally and safely operate,*

*In 2007 the legislature was asked to pass legislation that would have made it illegal for any one but a mortician to remove a pacemaker, inter alia.*

*This legislation, HB 323, was defeated with the legislature obviously unwilling to be used to prevent implant removal by the only persons logically involved with that task.*

*See Exhibit A-1, attached and made a part hereof to show prior litigation, inter alia.*

**Central Montana Crematorium, Inc.**  
License: 192 CRE  
P. O. Box 882  
100 Cattail Drive  
Telephone: (406) 538-4400  
Lewistown, Montana 59457

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- b. Entering prepaid 'funeral' arrangement contracts;

*This matter has been litigated before this board on a prior occasion; WE ARE PERMITTED BY LAW TO PROVIDE A PROCESS FOR PREPAYMENT and we continue to do so. See ARM 24.147.1502 which requires crematoriums to provide information for ALTERNATE services. We do not receive advance payment from any person desiring to make advance arrangements to use our services, but we do let them know how they can make advance arrangements for payment at the time of need. We do not hold or control any money from any person in this situation. We never make any kind of arrangements for 'funeral' services since we never do funerals. Thus, we never work under the constraints of ARM 24.147.1503. The people of this community know how they can do memorial services without using any death industry company.*

*See Exhibit B-1, attached and made a part hereof to show prior litigation, inter alia.*

- c. Conducting funeral services;

*We do not conduct funeral services nor have we ever done so. This board's own investigator came to this same conclusion.*

*[No attached exhibit is required.]*

- d. Preparing bodies and providing funeral arrangements; and,

*We do nothing toward preparing bodies and providing funeral arrangements. This is simply untrue and has always been so.*

e. Removing/transporting bodies.

*No one is required to be licensed to remove a dead body. The requirements of the Department of Health must be followed. I have communication from the Board of Funeral Service indicating they have no jurisdiction in this matter. A petition dated the 9<sup>th</sup> day of January, 2004, brought the following to the Board on a Petition for Declaratory Ruling. The three issues set out at that time were as follows:*

- (1) removing a dead body to the crematorium pursuant to section 50-15-405(4) MCA;*
- (2) cremating the remains; and,*
- (3) returning said cremated remains to the duly authorized persons.*

*On January 21, 2004, Board counsel announced by letter to the undersigned that the Board refused to issue a Declaratory Ruling 'because it believes that it is without jurisdiction to control or otherwise regulate the transportation of dead bodies, at least in the initial stages of removing a dead body from a hospital, accident scene or family/nursing home. \*\*\*' Counsel then went on to make the following gratuitous comment: 'Even though the initial transportation of a dead body is not restricted or regulated by the Board, it appears that once a dead body arrives at a crematorium, that some type of "funeral directing" as defined by Section 37-19-101(20), MCA or "funeral services", as defined in ARM 24.147.302(9) would have to be provided. If so, such "directing" and/or "services" can only*

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be provided by a licensed mortician.' The board's own investigator found this was not being done. It still is not being done. Further, the only purpose for such a rule would be the protection of the monopoly of the mortuary business without making any improvement in the welfare of the public.

*On January 22, 2004, the Montana Department of Labor and Industry wrote a letter to R. J. Brown of Cloyd's Funeral Home and James Harris of Creel Funeral Home, both of Lewistown, MT, which concluded, 'As long as an Authorization for Removal of Dead Bodies is properly executed, the transportation may be performed by "any entity."'*

*See Exhibit E-1, attached and made a part hereof to show prior litigation, inter alia.*

Because of the repetitive, previously litigated matters contained in these two complaints you are hereby asked to immediately DISMISS THE ENTIRETY OF THESE COMPLAINTS WITH PREJUDICE so that the respondent herein does not need to incur additional cost in this matter and so there is no further interference with the business of Central Montana Crematorium, Inc.

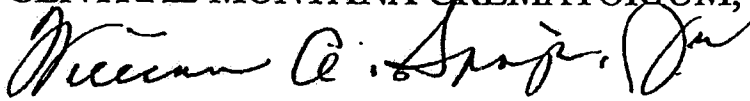
All future correspondence in connection with these matter should be addressed as follows:

Originals:	Mary K. Jaraczski Ugrin, Alexander et al. #2 Raidroad Square, Suite B PPO Box 1746 Great Falls, MT 59403 Phone: (406) 771-0007 Facsimile: (406) 452-9360	Copies:	William A. Spoja, Jr. PO Box 882 Lewistown, MT 59457  Phone: (406) 538-8767 or (406) 350-1870 Facsimile: (406) 538-5861
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**Central Montana Crematorium, Inc.**  
License: 192 CRE  
P. O. Box 882  
100 Cattail Drive  
Telephone: (406) 538-4400  
Lewistown, Montana 59457

Please call both of us for the conference call at the time the screening panel meets.

Sincerely,  
WILLIAM A. SPOJA, JR., pro se and  
For CENTRAL MONTANA CREMATORIUM, INC.



By: William A. Spoja, Jr., President and Counsel

WAS.s



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August 11, 2006

Our File: SP 12-04

**BY FACSIMILE AND  
REGULAR MAIL**

M. Gene Allison  
Montana Department of Labor and Industry  
Office of Legal Services  
301 South Park Avenue  
P.O. Box 200513  
Helena, MT 59620-0513

**RE: In re Central Montana Crematorium, Inc.  
Complaint Nos. FNR 2005-4, 2005-8**

Dear Gene:

Thank you for recently discussing with us the complaints referenced above. As we stated during our conference call, we believe further prosecution of the complaints is not only improper but also in violation of the law. Following is our analysis of the issues presented.

**Prior Proceeding before the Funeral Board**

At the July 11, 2006 meeting of the Funeral Board, the adjudication panel of the Board considered the findings, conclusions and recommended order of the hearing examiner on the disciplinary charges against licensed crematory operators Bill Spoja, Jr., and Allen C. Gallagher, Sr. Mr. Spoja owns and operates the Central Montana Crematorium in Lewistown. Mr. Gallagher manages the crematory.

The issue before the hearing examiner was whether Mr. Spoja and Mr. Gallagher were engaging in the business of funeral directing, without being licensed to do so. The complainants in the proceeding were Dick Brown and James Harris, both of whom own

and operate funeral homes in Lewistown. In addition, Mr. Brown is a member of the Funeral Board.

Mr. Brown and Mr. Harris complained that in operating the crematorium, Mr. Spoja and Mr. Gallagher were providing services which require licensing as a funeral director or mortician. The hearing examiner, however, found that Mr. Spoja and Mr. Gallagher were not violating the law, as charged. At the July meeting, the adjudication panel of the Board considered and discussed the hearing examiner's decision and voted to dismiss the charges, based on the hearing examiner's recommendation. The Board issued the order of dismissal on July 26, 2006.

### **Present Proceeding before the Funeral Board**

There are two tag-a-long complaints to the five the Board dismissed in July. The complainants are Mr. Harris, who was a complainant in the first proceeding, and Shawn Brooks. Mr. Brooks is a licensed mortician and crematory operator who works for Mr. Harris on occasion. The complaints are against the Central Montana Crematorium.

At the July of 2006 Funeral Board meeting, the screening panel of the Board decided to refer the complaints for investigation. The reasons given for the decision were that the new complaints were against the crematorium, as opposed to Mr. Spoja and Mr. Gallagher; the complaints were brought by different complainants; the decision of the hearing examiner can not be used as precedent in this proceeding; and the decision of the hearing examiner was based on stipulated facts.

We strongly disagree with the decision to further review and prosecute the complaints. The reasons for our position are stated below.

### **Parties Charged**

The fact that the new complaints are against crematorium, rather than Mr. Spoja and Mr. Gallagher, is a distinction without a difference. Mr. Spoja owns the crematorium, which is the legal entity through which the business is conducted by Mr. Spoja and Mr. Gallagher. The crematorium and Mr. Spoja, along with Mr. Gallagher, are thus one in the same.

### **Brooks' Complaint**

Mr. Brooks' complaint (attached at Exhibit A) is a rambling letter which fails to allege any particular violation against the crematorium. It is thus difficult, if not impossible, for the party charged, which is the crematorium, to determine the substance of Mr. Brooks' complaint, let alone the underlying facts.

This is a clear violation of due process. At a minimum, the crematorium is entitled to proper notice of the specific charges against it, so it can prepare its defense.

The documents attached to the complaint do not remedy this defect. All of the attachments were part of the previous investigation and have therefore already been considered by the hearing examiner and the Board in the prior proceeding. This attempt to get a second bite at the apple is prohibited by the doctrines of res judicata and collateral estoppel.

### Harris' Complaint

Mr. Harris' complaint is also deficient. In the form complaint filed with the Department (attached at Exhibit B), Mr. Harris identifies the "Nature of Complaint" as follows:

Central Montana Crematorium, Inc. offers direct cremation and memorial services to members of the public. As outlined in the enclosed analysis and accompanying material provided by attorney T. Scott Gilligan, the offerings and operations of the Central Montana Crematorium, Inc. are in violation of Montana laws and the regulations of this Board. They constitute the operation of an unlicensed mortuary and unlicensed funeral services by the operators of Central Montana Crematorium.

### Legal Issues

Both of the issues raised in Mr. Harris' complaint, direct cremation and memorial services, were heard and adjudicated by the Funeral Board in the prior proceeding. In a thorough and well-reasoned opinion, the hearing examiner concluded, and the Board concurred in the decision, that Mr. Spoja and Mr. Gallagher have the right to perform direct cremations and that they are not providing funeral services in conjunction with the cremation. Mr. Harris is thus attempting to bring before the Board for a second time claims which have already been heard, and in this case, dismissed after a full investigation and administrative review. Res judicata and collateral estoppel prohibit redundant litigation of this sort.

On January 21, 2004, Jack Atkins, legal counsel for the Funeral Board, wrote to Mr. Spoja about the direct cremation issue. In the letter (attached as Exhibit C), Mr. Atkins expressed his opinion that the crematorium can offer direct cremations: "It is the Board's position that a hospital may release dead bodies to any entity as long as an Authorization for Removal of Dead Bodies had been properly executed." The same conclusion was reached by the hearing examiner and the Board.

The legal authority on which Mr. Harris relies in bringing his complaint is irrelevant to this proceeding. The written opinion of Mr. Gilligan, who represents that he is an attorney practicing in Ohio, and the attached order from the Pennsylvania court, have no bearing on the issues presented, which are governed by Montana law.

### Factual Issues

Mr. Harris relies on only two pieces of evidence in bringing his claims. In his complaint, Mr. Harris identifies the "List of Witnesses and Evidence" as follows:

July 31, 2004 Letter of Central Montana Crematorium Inc. (attached);  
Article from Lewistown News Argus

Overall, Mr. Harris, like Mr. Brooks, fails to state a cognizable claim, due to the complete absence of any specific factual allegations. Nowhere in the complaint does Mr. Harris explain how the two documents relate to, or in any way support, his claims. Due process requires that the crematorium have sufficient notice of the charges against it, which includes notice of the underlying facts. In this case, notice of the bases of the claims is not pled. This makes it impossible for the crematorium to answer the charges. In these circumstances, due process protects the crematorium from having to answer and thereby speculate about the underlying facts.

In addition, Mr. Harris, like Mr. Brooks, errs in seeking to relitigate the same facts. A similar version of the crematorium's letter, which was published in the local newspaper as an advertisement, was considered in the prior litigation in conjunction with the direct cremation issue. (See Exhibits D, E). Because the underlying facts are the same, and the same legal analysis applies, the issue of direct cremation can not be relitigated. This is precisely what the well-established doctrines of res judicata and collateral estoppel hold. These principles squarely apply here, as this is a textbook case of a party trying to redo prior litigation.

Neither the letter nor the newspaper article support Mr. Harris' claim that the crematorium is providing memorial services. Rather, the article specifically states that the crematorium "does not perform memorial or funeral services" and that memorial services can be held either in a church, chapel or some other location. Likewise the ad states: "We are neither MORTICIANS nor FUNERAL DIRECTORS. By state regulation, we do not offer viewing, visitation or ceremonies of any type." Although the newspaper article makes reference to the crematorium being available at no charge to families for a private service, this has never happened and is not a service offered.

That the crematorium does not provide memorial services or funeral directing is wholly consistent with and established by the record in the first proceeding. At the Board meeting, there was some discussion about the facts being stipulated to by the parties. This is not unusual and the parties here chose to streamline the administrative review process by agreeing to the relevant facts. This is completely proper and does not reflect on the accuracy of the agreed-to facts. Rather, both parties were obligated to, and did in fact, report the facts as they exist.

## **Conclusion**

The crematorium should not be forced to again defend itself against broad allegations of wrongdoing brought by the same complainant, Mr. Harris, and his business associate, Mr. Brooks. Reading between the lines, it is easy to conclude that the local funeral homes in Lewistown are using state action in an attempt to derail the crematorium, which is a source of competition. This is not only improper but also an unlawful abuse of power.

Mr. Spoja has already expended considerable time and money in the first round of litigation, which went on for well over two years. Having successfully defended his business practices and been found innocent of the charges against him, Mr. Spoja should not have to defend against the same charges a second time. If the Board does not act to stop the present litigation, it is likely that more spurious complaints will be filed against the crematorium.

In these circumstances, the actions of the state are clearly oppressive and subject to claims of malicious prosecution as well as section 1983 claims against the individual Board members. The actions of the Board in failing to put an end to what appears to be an endless stream of redundant complaints against the crematorium have left Mr. Spoja no choice but to pursue legal action of this sort.

I appreciate your willingness to consider our thoughts on these matters. If I can be of any further assistance in sorting through the issues, please do not hesitate to call.

Sincerely yours,

UGRIN, ALEXANDER, ZADICK & HIGGINS, P.C.

Neil E. Ugrin

MKJ

cc: B. Spoja (w/enclose)

BEFORE THE BOARD OF FUNERAL SERVICE  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

IN THE MATTER OF THE PETITION FOR ) DECLARATORY RULING  
DECLARATORY RULING ON THE )  
APPLICABILITY OF SECTION 37-19-101 )  
(13) AND 37-19-301, MCA, TO SEVEN )  
FUNERAL HOMES' PRE-NEED FUNERAL )  
ARRANGEMENT PROGRAM IN MONTANA )

TO: All interested persons:

1. On July 21, 1997, the Board of Funeral Service published a Notice of Petition for Declaratory Ruling from seven licensed funeral homes in Montana: Livingston, Malletta & Geraghty, Missoula; Squire, Simmons & Carr, Missoula; Sunset Memorial Funeral Home and Cemetery, Missoula; O'Connor Funeral Home, Great Falls; Chapel of Chimes, Great Falls; Gorder Funeral Home, Choteau; and Retz Funeral Home, Helena. The Petitioners questioned whether their pre-need funeral arrangement services, which are offered to the general public, may be offered by non-licensed persons, who are supervised by licensed morticians.

2. Petitioners noted that 37-19-101(13), MCA, states that the definition of "funeral directing" includes "supervising funerals, including the making of pre-need or at-need contractual arrangements for funerals."

3. Petitioners further noted that 37-19-301, MCA, states that the practice of funeral directing by anyone who does not hold a funeral director's license or a mortician's license issued by the department is prohibited.

4. Petitioners presented the issue to the board as the question "whether the Petitioners' pre-need program complies with Montana law to the extent that it utilizes non-licensed personnel under the direct supervision of a licensed funeral director...."

5. The Board considered the Petition at a hearing held August 19, 1997. The Board ruled that the Petitioners, or any other licensed funeral homes, funeral directors, or morticians, may NOT utilize unlicensed personnel under the direct supervision of a licensed mortician to offer, present, facilitate, sell, contract with, or otherwise participate in pre-need contractual arrangements for funerals.

6. The Board's reasoning stated that the plain reading of 37-19-101(13), the definition of "funeral directing," does not appear to allow for pre-need or at-need contractual funeral arrangements to be conducted under supervision only. Instead, this definition of "funeral directing," plus Section 37-19-301, MCA, which states the practice of funeral directing may only be done by a licensed person, requires pre-need and at-need contractual funeral arrangements to be restricted to licensed persons only.



7. Section 37-19-101(13) had been amended in 1989, but the purpose of adding the clause "including the making of pre-need or at-need contractual arrangements for funerals" was not meant to modify the word "supervision" only. The clause was to expand the definition of funeral directing, and clarify when licensed persons must conduct the activities. The purpose was not to expand the definition and therefore the practice of funeral directing to unlicensed persons, with or without any type of supervision arrangement.

8. The Board's intent in its ruling is to rule in the best interests of the public. The public is not well served, and it is not in their best interest, to allow pre-need or at-need contractual funeral arrangements to be made by unlicensed persons. The Board noted, as a safety issue, that it has jurisdiction over its own licensees only. These people may be held accountable, and their actions may be a cause for license discipline if fraud, misrepresentation, or any of a myriad of other conducts serves to cheat the consumer during the pre-need sale. This same safeguard does not exist for a consumer cheated by an unlicensed person, as the Board would be limited to a District Court injunctive action to prevent future sales. There is no recourse with the Board if unlicensed persons fail to act up to the standards of the profession in conducting their pre-need contractual funeral arrangement sales.

9. Further, the Board noted any contrary ruling allowing unlicensed persons to conduct the practice of funeral service, including their utilization to sell pre-need funeral arrangements under supervision, would be a sweeping change of interpretation for this Board. The statute has been read and interpreted by the Board as requiring licensure for all activities included under the definition of "funeral directing" for many years, back to the year it was enacted.

10. The Board specifically noted that the issue presented and ruled upon is not whether a particular funeral home, or a particular in-state or out-of-state corporation may engage in this practice. Instead, the issue and ruling are to be applied state-wide, to all funeral homes and licensed morticians and funeral directors in the state of Montana. The best interest of the consumer requires this prohibition be enforced state-wide.

11. Finally, the Board found the Petitioners' suggested statutory interpretation to be strained. The Petitioners' witness, an unlicensed funeral home employee, stated he was performing the duties and activities of a licensed funeral director for pre-need consumers, but was not allowed to conduct the same activities for at-need consumers. This contradictory position again suggested the statute should be read to require a licensed funeral director or mortician for all pre AND at-need contractual funeral arrangements.

12. The Board denied the Petition, and interprets the statutes as NOT allowing unlicensed persons to be utilized by licensed funeral homes, licensed funeral directors, or licensed morticians for the purpose of selling pre-need funeral

arrangements, whether or not the unlicensed person is supervised by a licensee of the Board.

13. Any interested parties may request judicial review of this declaratory ruling by filing a petition for judicial review in a District Court of the State of Montana within thirty (30) days of their receipt of this ruling pursuant to 2-4-501 and 2-4-702, MCA.

DATED: this Third day of September,  
1997.

BOARD OF FUNERAL SERVICE

BY: DAVID G. FULKERSON  
DAVE FULKERSON, CHAIRMAN



#### § 444.4

agreement creating the cosigner's liability for future charges is executed:

##### NOTICE TO COSIGNER

You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount.

The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record.

This notice is not the contract that makes you liable for the debt.

#### § 444.4 Late charges.

(a) In connection with collecting a debt arising out of an extension of credit to a consumer in or affecting commerce, as commerce is defined in the Federal Trade Commission Act, it is an unfair act or practice within the meaning of section 5 of that Act for a creditor, directly or indirectly, to levy or collect any delinquency charge on a payment, which payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period, when the only delinquency is attributable to late fee(s) or delinquency charge(s) assessed on earlier installment(s).

(b) For purposes of this section, *collecting a debt* means any activity other than the use of judicial process that is intended to bring about or does bring about repayment of all or part of a consumer debt.

#### § 444.5 State exemptions.

(a) If, upon application to the Federal Trade Commission by an appropriate State agency, the Federal Trade Commission determines that:

(1) There is a State requirement or prohibition in effect that applies to any transaction to which a provision of this rule applies; and

(2) The State requirement or prohibition affords a level of protection to consumers that is substantially equivalent

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to, or greater than, the protection afforded by this rule;

Then that provision of the rule will not be in effect in that State to the extent specified by the Federal Trade Commission in its determination, for as long as the State administers and enforces the State requirement or prohibition effectively.

(b) [Reserved]

### PART 453—FUNERAL INDUSTRY PRACTICES

#### Sec.

453.1 Definitions.

453.2 Price disclosures.

453.3 Misrepresentations.

453.4 Required purchase of funeral goods or funeral services.

453.5 Services provided without prior approval.

453.6 Retention of documents.

453.7 Comprehension of disclosures.

453.8 Declaration of intent.

453.9 State exemptions.

AUTHORITY: 15 U.S.C. 57a(a); 15 U.S.C. 46(g); 5 U.S.C. 552.

SOURCE: 59 FR 1611, Jan. 11, 1994, unless otherwise noted.

#### § 453.1 Definitions.

(a) *Alternative container.* An "alternative container" is an unfinished wood box or other non-metal receptacle or enclosure, without ornamentation or a fixed interior lining, which is designed for the encasement of human remains and which is made of fiberboard, pressed-wood, composition materials (with or without an outside covering) or like materials.

(b) *Cash advance item.* A "cash advance item" is any item of service or merchandise described to a purchaser as a "cash advance," "accommodation," "cash disbursement," or similar term. A cash advance item is also any item obtained from a third party and paid for by the funeral provider on the purchaser's behalf. Cash advance items may include, but are not limited to: cemetery or crematory services; pallbearers; public transportation; clergy honoraria; flowers; musicians or singers; nurses; obituary notices; gratuities and death certificates.



(c) *Casket*. A "casket" is a rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal, fiberglass, plastic, or like material, and ornamented and lined with fabric.

(d) *Commission*. "Commission" refers to the Federal Trade Commission.

(e) *Cremation*. "Cremation" is a heating process which incinerates human remains.

(f) *Crematory*. A "crematory" is any person, partnership or corporation that performs cremation and sells funeral goods.

(g) *Direct cremation*. A "direct cremation" is a disposition of human remains by cremation, without formal viewing, visitation, or ceremony with the body present.

(h) *Funeral goods*. "Funeral goods" are the goods which are sold or offered for sale directly to the public for use in connection with funeral services.

(i) *Funeral provider*. A "funeral provider" is any person, partnership or corporation that sells or offers to sell funeral goods and funeral services to the public.

(j) *Funeral services*. "Funeral services" are any services which may be used to:

(1) Care for and prepare deceased human bodies for burial, cremation or other final disposition; and

(2) arrange, supervise or conduct the funeral ceremony or the final disposition of deceased human bodies.

(k) *Immediate burial*. An "immediate burial" is a disposition of human remains by burial, without formal viewing, visitation, or ceremony with the body present, except for a graveside service.

(l) *Memorial service*. A "memorial service" is a ceremony commemorating the deceased without the body present.

(m) *Funeral ceremony*. A "funeral ceremony" is a service commemorating the deceased with the body present.

(n) *Outer burial container*. An "outer burial container" is any container which is designed for placement in the grave around the casket including, but not limited to, containers commonly known as burial vaults, grave boxes, and grave liners.

(o) *Person*. A "person" is any individual, partnership, corporation, association, government or governmental subdivision or agency, or other entity.

(p) *Services of funeral director and staff*. The "services of funeral director and staff" are the basic services, not to be included in prices of other categories in § 453.2(b)(4), that are furnished by a funeral provider in arranging any funeral, such as conducting the arrangements conference, planning the funeral, obtaining necessary permits, and placing obituary notices.

#### § 453.2 Price disclosures.

(a) *Unfair or deceptive acts or practices*. In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider to fail to furnish accurate price information disclosing the cost to the purchaser for each of the specific funeral goods and funeral services used in connection with the disposition of deceased human bodies, including at least the price of embalming, transportation of remains, use of facilities, caskets, outer burial containers, immediate burials, or direct cremations, to persons inquiring about the purchase of funerals. Any funeral provider who complies with the preventive requirements in paragraph (b) of this section is not engaged in the unfair or deceptive acts or practices defined here.

(b) *Preventive requirements*. To prevent these unfair or deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in § 453.4(b)(1), funeral providers must:

(1) *Telephone price disclosure*. Tell persons who ask by telephone about the funeral provider's offerings or prices any accurate information from the price lists described in paragraphs (b)(2) through (4) of this section and any other readily available information that reasonably answers the question.

(2) *Casket price list*. (i) Give a printed or typewritten price list to people who inquire in person about the offerings or prices of caskets or alternative containers. The funeral provider must offer the list upon beginning discussion of, but in any event before showing caskets. The list must contain at least the

retail prices of all caskets and alternative containers offered which do not require special ordering, enough information to identify each, and the effective date for the price list. In lieu of a written list, other formats, such as notebooks, brochures, or charts may be used if they contain the same information as would the printed or typewritten list, and display it in a clear and conspicuous manner. Provided, however, that funeral providers do not have to make a casket price list available if the funeral providers place on the general price list, specified in paragraph (b)(4) of this section, the information required by this paragraph.

(ii) Place on the list, however produced, the name of the funeral provider's place of business and a caption describing the list as a "casket price list."

(3) *Outer burial container price list.* (i) Give a printed or typewritten price list to persons who inquire in person about outer burial container offerings or prices. The funeral provider must offer the list upon beginning discussion of, but in any event before showing the containers. The list must contain at least the retail prices of all outer burial containers offered which do not require special ordering, enough information to identify each container, and the effective date for the prices listed. In lieu of a written list, the funeral provider may use other formats, such as notebooks, brochures, or charts, if they contain the same information as the printed or typewritten list, and display it in a clear and conspicuous manner. Provided, however, that funeral providers do not have to make an outer burial container price list available if the funeral providers place on the general price list, specified in paragraph (b)(4) of this section, the information required by this paragraph.

(ii) Place on the list, however produced, the name of the funeral provider's place of business and a caption describing the list as an "outer burial container price list."

(4) *General price list.* (i)(A) Give a printed or typewritten price list for retention to persons who inquire in person about the funeral goods, funeral services or prices of funeral goods or services offered by the funeral pro-

vider. The funeral provider must give the list upon beginning discussion of any of the following:

(1) The prices of funeral goods or funeral services;

(2) The overall type of funeral service or disposition; or

(3) Specific funeral goods or funeral services offered by the funeral provider.

(B) The requirement in paragraph (b)(4)(i)(A) of this section applies whether the discussion takes place in the funeral home or elsewhere. Provided, however, that when the deceased is removed for transportation to the funeral home, an in-person request at that time for authorization to embalm, required by § 453.5(a)(2), does not, by itself, trigger the requirement to offer the general price list if the provider in seeking prior embalming approval discloses that embalming is not required by law except in certain special cases, if any. Any other discussion during that time about prices or the selection of funeral goods or services triggers the requirement under paragraph (b)(4)(i)(A) of this section to give consumers a general price list.

(C) The list required in paragraph (b)(4)(i)(A) of this section must contain at least the following information:

(1) The name, address, and telephone number of the funeral provider's place of business;

(2) A caption describing the list as a "general price list"; and

(3) The effective date for the price list;

(ii) Include on the price list, in any order, the retail prices (expressed either as the flat fee, or as the price per hour, mile or other unit of computation) and the other information specified below for at least each of the following items, if offered for sale:

(A) Forwarding of remains to another funeral home, together with a list of the services provided for any quoted price;

(B) Receiving remains from another funeral home, together with a list of the services provided for any quoted price;

(C) The price range for the direct cremations offered by the funeral provider, together with:

- (1) A separate price for a direct cremation where the purchaser provides the container;
- (2) Separate prices for each direct cremation offered including an alternative container; and
- (3) A description of the services and container (where applicable), included in each price;
- (D) The price range for the immediate burials offered by the funeral provider, together with:
  - (1) A separate price for an immediate burial where the purchaser provides the casket;
  - (2) Separate prices for each immediate burial offered including a casket or alternative container; and
  - (3) A description of the services and container (where applicable) included in that price;
- (E) Transfer of remains to funeral home;
- (F) Embalming;
- (G) Other preparation of the body;
- (H) Use of facilities and staff for viewing;
- (I) Use of facilities and staff for funeral ceremony;
- (J) Use of facilities and staff for memorial service;
- (K) Use of equipment and staff for graveside service;
- (L) Hearse; and
- (M) Limousine.
- (iii) Include on the price list, in any order, the following information:
  - (A) Either of the following:
    - (1) The price range for the caskets offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home."; or
    - (2) The prices of individual caskets, disclosed in the manner specified by paragraph (b)(2)(i) of this section; and
  - (B) Either of the following:
    - (1) The price range for the outer burial containers offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home."; or
    - (2) The prices of individual outer burial containers, disclosed in the manner specified by paragraph (b)(3)(i) of this section; and
  - (C) Either of the following:
    - (1) The price for the basic services of funeral director and staff, together with a list of the principal basic services provided for any quoted price and, if the charge cannot be declined by the purchaser, the statement: "This fee for our basic services will be added to the total cost of the funeral arrangements you select. (This fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains.)". If the charge cannot be declined by the purchaser, the quoted price shall include all charges for the recovery of unallocated funeral provider overhead, and funeral providers may include in the required disclosure the phrase "and overhead" after the word "services"; or
    - (2) The following statement: "Please note that a fee of (specify dollar amount) for the use of our basic services is included in the price of our caskets. This same fee shall be added to the total cost of your funeral arrangements if you provide the casket. Our services include (specify)." The fee shall include all charges for the recovery of unallocated funeral provider overhead, and funeral providers may include in the required disclosure the phrase "and overhead" after the word "services." The statement must be placed on the general price list together with the casket price range, required by paragraph (b)(4)(iii)(A)(1) of this section, or together with the prices of individual caskets, required by (b)(4)(iii)(A)(2) of this section.
  - (iv) The services fee permitted by § 453.2(b)(4)(iii)(C)(1) or (C)(2) is the only funeral provider fee for services, facilities or unallocated overhead permitted by this part to be non-declinable, unless otherwise required by law.
- (5) *Statement of funeral goods and services selected.* (i) Give an itemized written statement for retention to each person who arranges a funeral or other disposition of human remains, at the conclusion of the discussion of arrangements. The statement must list at least the following information:
  - (A) The funeral goods and funeral services selected by that person and the prices to be paid for each of them;
  - (B) Specifically itemized cash advance items. (These prices must be given to the extent then known or reasonably ascertainable. If the prices are not known or reasonably ascertainable,

a good faith estimate shall be given and a written statement of the actual charges shall be provided before the final bill is paid.); and

(C) The total cost of the goods and services selected.

(ii) The information required by this paragraph (b)(5) may be included on any contract, statement, or other document which the funeral provider would otherwise provide at the conclusion of discussion of arrangements.

(6) *Other pricing methods.* Funeral providers may give persons any other price information, in any other format, in addition to that required by § 453.2(b)(2), (3), and (4) so long as the statement required by § 453.2(b)(5) is given when required by the rule.

**§ 453.3 Misrepresentations.**

(a) *Embalming provisions.* (1) *Deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that state or local law requires that a deceased person be embalmed when such is not the case;

(ii) Fail to disclose that embalming is not required by law except in certain special cases, if any.

(2) *Preventive requirements.* To prevent these deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in §§ 453.4(b)(1) and 453.5(2), funeral providers must:

(i) Not represent that a deceased person is required to be embalmed for:

(A) Direct cremation;

(B) Immediate burial; or

(C) A closed casket funeral without viewing or visitation when refrigeration is available and when state or local law does not require embalming; and

(ii) Place the following disclosure on the general price list, required by § 453.2(b)(4), in immediate conjunction with the price shown for embalming: "Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement that does not require you to pay for it, such as direct cremation or

immediate burial." The phrase "except in certain special cases" need not be included in this disclosure if state or local law in the area(s) where the provider does business does not require embalming under any circumstances.

(b) *Casket for cremation provisions—(1) Deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that state or local law requires a casket for direct cremations;

(ii) Represent that a casket is required for direct cremations.

(2) *Preventive requirements.* To prevent these deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in § 453.4(a)(1), funeral providers must place the following disclosure in immediate conjunction with the price range shown for direct cremations: "If you want to arrange a direct cremation, you can use an alternative container. Alternative containers encase the body and can be made of materials like fiberboard or composition materials (with or without an outside covering). The containers we provide are (specify containers)." This disclosure only has to be placed on the general price list if the funeral provider arranges direct cremations.

(c) *Outer burial container provisions—*

(1) *Deceptive acts or practices.* In selling or offering to sell funeral goods and funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that state or local laws or regulations, or particular cemeteries, require outer burial containers when such is not the case;

(ii) Fail to disclose to persons arranging funerals that state law does not require the purchase of an outer burial container.

(2) *Preventive requirement.* To prevent these deceptive acts or practices, funeral providers must place the following disclosure on the outer burial container price list, required by § 453.2(b)(3)(i), or, if the prices of outer burial containers are listed on the general price list, required by § 453.2(b)(4), in immediate conjunction with those prices: "In most areas of the country, state or local law does not require that

you buy a container to surround the casket in the grave. However, many cemeteries require that you have such a container so that the grave will not sink in. Either a grave liner or a burial vault will satisfy these requirements." The phrase "in most areas of the country" need not be included in this disclosure if state or local law in the area(s) where the provider does business does not require a container to surround the casket in the grave.

(d) *General provisions on legal and cemetery requirements*—(1) *Deceptive acts or practices*. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for funeral providers to represent that federal, state, or local laws, or particular cemeteries or crematories, require the purchase of any funeral goods or funeral services when such is not the case.

(2) *Preventive requirements*. To prevent these deceptive acts or practices, as well as the deceptive acts or practices identified in §§ 453.3(a)(1), 453.3(b)(1), and 453.3(c)(1), funeral providers must identify and briefly describe in writing on the statement of funeral goods and services selected (required by § 453.2(b)(5)) any legal, cemetery, or crematory requirement which the funeral provider represents to persons as compelling the purchase of funeral goods or funeral services for the funeral which that person is arranging.

(e) *Provisions on preservative and protective value claims*. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(1) Represent that funeral goods or funeral services will delay the natural decomposition of human remains for a long-term or indefinite time;

(2) Represent that funeral goods have protective features or will protect the body from gravesite substances, when such is not the case.

(f) *Cash advance provisions*—(1) *Deceptive acts or practices*. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that the price charged for a cash advance item is the same as

the cost to the funeral provider for the item when such is not the case;

(ii) Fail to disclose to persons arranging funerals that the price being charged for a cash advance item is not the same as the cost to the funeral provider for the item when such is the case.

(2) *Preventive requirements*. To prevent these deceptive acts or practices, funeral providers must place the following sentence in the itemized statement of funeral goods and services selected, in immediate conjunction with the list of itemized cash advance items required by § 453.2(b)(5)(i)(B): "We charge you for our services in obtaining: (specify cash advance items)," if the funeral provider makes a charge upon, or receives and retains a rebate, commission or trade or volume discount upon a cash advance item.

#### § 453.4 Required purchase of funeral goods or funeral services.

(a) *Casket for cremation provisions*—(1) *Unfair or deceptive acts or practices*. In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider, or a crematory, to require that a casket be purchased for direct cremation.

(2) *Preventive requirement*. To prevent this unfair or deceptive act or practice, funeral providers must make an alternative container available for direct cremations, if they arrange direct cremations.

(b) *Other required purchases of funeral goods or funeral services*—(1) *Unfair or deceptive acts or practices*. In selling or offering to sell funeral goods or funeral services, it is an unfair or deceptive act or practice for a funeral provider to:

(i) Condition the furnishing of any funeral good or funeral service to a person arranging a funeral upon the purchase of any other funeral good or funeral service, except as required by law or as otherwise permitted by this part;

(ii) Charge any fee as a condition to furnishing any funeral goods or funeral services to a person arranging a funeral, other than the fees for: (1) Services of funeral director and staff, permitted by § 453.2(b)(4)(iii)(C); (2) other funeral services and funeral goods selected by the purchaser; and (3) other

funeral goods or services required to be purchased, as explained on the itemized statement in accordance with § 453.3(d)(2).

(2) *Preventive requirements.* (i) To prevent these unfair or deceptive acts or practices, funeral providers must:

(A) Place the following disclosure in the general price list, immediately above the prices required by § 453.2(b)(4) (ii) and (iii): "The goods and services shown below are those we can provide to our customers. You may choose only the items you desire. If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected." Provided, however, that if the charge for "services of funeral director and staff" cannot be declined by the purchaser, the statement shall include the sentence: "However, any funeral arrangements you select will include a charge for our basic services" between the second and third sentences of the statement specified above herein. The statement may include the phrase "and overhead" after the word "services" if the fee includes a charge for the recovery of unallocated funeral provider overhead;

(B) Place the following disclosure in the statement of funeral goods and services selected, required by § 453.2(b)(5)(i): "Charges are only for those items that you selected or that are required. If we are required by law or by a cemetery or crematory to use any items, we will explain the reasons in writing below."

(ii) A funeral provider shall not violate this section by failing to comply with a request for a combination of goods or services which would be impossible, impractical, or excessively burdensome to provide.

**§ 453.5 Services provided without prior approval.**

(a) *Unfair or deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for any provider to embalm a deceased human body for a fee unless:

(i) State or local law or regulation requires embalming in the particular

circumstances regardless of any funeral choice which the family might make; or

(2) Prior approval for embalming (expressly so described) has been obtained from a family member or other authorized person; or

(3) The funeral provider is unable to contact a family member or other authorized person after exercising due diligence, has no reason to believe the family does not want embalming performed, and obtains subsequent approval for embalming already performed (expressly so described). In seeking approval, the funeral provider must disclose that a fee will be charged if the family selects a funeral which requires embalming, such as a funeral with viewing, and that no fee will be charged if the family selects a service which does not require embalming, such as direct cremation or immediate burial.

(b) *Preventive requirement.* To prevent these unfair or deceptive acts or practices, funeral providers must include on the itemized statement of funeral goods and services selected, required by § 453.2(b)(5), the statement: "If you selected a funeral that may require embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If we charged for embalming, we will explain why below."

**§ 453.6 Retention of documents.**

To prevent the unfair or deceptive acts or practices specified in §§ 453.2 and 453.3 of this rule, funeral providers must retain and make available for inspection by Commission officials true and accurate copies of the price lists specified in §§ 453.2(b) (2) through (4), as applicable, for at least one year after the date of their last distribution to customers, and a copy of each statement of funeral goods and services selected, as required by § 453.2(b)(5), for at least one year from the date of the arrangements conference.

**§ 453.7 Comprehension of disclosures.**

To prevent the unfair or deceptive acts or practices specified in §§ 453.2

## Federal Trade Commission

## § 455.1

through 453.5, funeral providers must make all disclosures required by those sections in a clear and conspicuous manner. Providers shall not include in the casket, outer burial container, and general price lists, required by §§ 453.2(b)(2)-(4), any statement or information that alters or contradicts the information required by this part to be included in those lists.

### § 453.8 Declaration of intent.

(a) Except as otherwise provided in § 453.2(a), it is a violation of this rule to engage in any unfair or deceptive acts or practices specified in this rule, or to fail to comply with any of the preventive requirements specified in this rule;

(b) The provisions of this rule are separate and severable from one another. If any provision is determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

(c) This rule shall not apply to the business of insurance or to acts in the conduct thereof.

### § 453.9 State exemptions.

If, upon application to the Commission by an appropriate state agency, the Commission determines that:

(a) There is a state requirement in effect which applies to any transaction to which this rule applies; and

(b) That state requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by this rule; then the Commission's rule will not be in effect in that state to the extent specified by the Commission in its determination, for as long as the State administers and enforces effectively the state requirement.

## PART 455—USED MOTOR VEHICLE TRADE REGULATION RULE

Sec.

455.1 General duties of a used vehicle dealer; definitions.

455.2 Consumer sales—window form.

455.3 Window form.

455.4 Contrary statements.

455.5 Spanish language sales.

455.6 State exemptions.

455.7 Severability.

AUTHORITY: 88 Stat. 2189, 15 U.S.C. 2309; 38 Stat. 717, as amended 15 U.S.C. 41 et seq.

SOURCE: 49 FR 45725, Nov. 19, 1984, unless otherwise noted.

### § 455.1 General duties of a used vehicle dealer; definitions.

(a) It is a deceptive act or practice for any used vehicle dealer, when that dealer sells or offers for sale a used vehicle in or affecting commerce as *commerce* is defined in the Federal Trade Commission Act:

(1) To misrepresent the mechanical condition of a used vehicle;

(2) To misrepresent the terms of any warranty offered in connection with the sale of a used vehicle; and

(3) To represent that a used vehicle is sold with a warranty when the vehicle is sold without any warranty.

(b) It is an unfair act or practice for any used vehicle dealer, when that dealer sells or offers for sale a used vehicle in or affecting commerce as *commerce* is defined in the Federal Trade Commission Act:

(1) To fail to disclose, prior to sale, that a used vehicle is sold without any warranty; and

(2) To fail to make available, prior to sale, the terms of any written warranty offered in connection with the sale of a used vehicle.

(c) The Commission has adopted this Rule in order to prevent the unfair and deceptive acts or practices defined in paragraphs (a) and (b). It is a violation of this Rule for any used vehicle dealer to fail to comply with the requirements set forth in §§ 455.2 through 455.5 of this part. If a used vehicle dealer complies with the requirements of §§ 455.2 through 455.5 of this part, the dealer does not violate this Rule.

(d) The following definitions shall apply for purposes of this part:

(1) *Vehicle* means any motorized vehicle, other than a motorcycle, with a gross vehicle weight rating (GVWR) of less than 8500 lbs., a curb weight of less than 6,000 lbs., and a frontal area of less than 46 sq. ft.

(2) *Used vehicle* means any vehicle driven more than the limited use necessary in moving or road testing a new vehicle prior to delivery to a consumer, but does not include any vehicle sold only for scrap or parts (title documents





**Federal Trade Commission  
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**Promulgation of the Funeral Industry Practices Trade Regulation Rule**

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**Funeral Industry Practices: 16 C.F.R. Part 453: Final Trade Regulation Rule, Statement of Basis and Purpose and Regulatory Analysis, and Dissenting Statement of Chairman James C. Miller III (September 24, 1982)**

Text of the Federal Register Notice [PDF]

**Funeral Industry Practices: Final Staff Report to the Federal Trade Commission and Proposed Trade Regulation Rule (16 CFR Part 453): Bureau of Consumer Protection (June 1978)**

Text of the Final Federal Trade Commission Staff Report [PDF]

**Funeral Industry Practices: Report of Presiding Officer Jack E. Kahn on the Proposed Trade Regulation Rule (16 CFR Part 453) (Public Record 215-46) (July 1977)**

Text of the Report of the Presiding Officer [PDF]

**Funeral Industry Practices: Proposed Trade Regulation Rule and Staff Memorandum: Division of Special Projects, Bureau of Consumer Protection (August 1975)**

Text of the Federal Trade Commission Staff Memorandum [PDF]

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**Funeral Rule - 16 CFR Part 453**

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Text of the Funeral Industry Practices Trade Regulation Rule

Promulgation of the Funeral Industry Practices Trade Regulation Rule:

Relevant Documents

Mandatory Review of the Funeral Industry Practices Trade Regulation Rule::

Relevant Documents

Regulatory Reform:

Funeral Rule Review

Consumer Information:

Funerals: A Consumer Guide [PDF]

How to Comply:

Complying with the Funeral Rule

Funeral Rule Text:

16 CFR Part 453

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Last Modified: 24 October 2008

## **CASE LAW CITED IN ARGUMENT**

C

Supreme Court of Montana.  
 Roger HOLTMAN, Plaintiff and Appellant,  
 v.

4-G'S PLUMBING & HEATING, INC., a corpora-  
 tion, Defendants and Respondents.

No. 93-365.  
 Submitted on Briefs Dec. 16, 1993.  
 Decided April 5, 1994.

Condominium unit owner brought suit against plumbing and heating company and condominium association alleging trespass, invasion of privacy and asbestos contamination. The Fourth Judicial District Court, County of Missoula, Douglas G. Harkin, J., entered summary judgment for both condominium association and heating and plumbing company on grounds of res judicata. Unit owner appealed grant of summary judgment to heating and plumbing company with respect to asbestos contamination claim. The Supreme Court, Gray, J., held that: (1) condominium association and heating and plumbing company were not "privies" so as to bar owner's claim against company for negligent asbestos contamination based on dismissal of counterclaims against association in prior lawsuit; and (2) unit owner's negligent asbestos contamination claim against heating and plumbing company did not raise "identical issue" raised in claim concerning asbestos asserted against association so as to bar claim against company under doctrine of collateral estoppel.

Reversed and remanded.

#### West Headnotes

#### [1] Appeal and Error 30 ⚡842(2)

##### 30 Appeal and Error 30XVI Review

##### 30XVI(A) Scope, Standards, and Extent, in General

##### 30k838 Questions Considered

##### 30k842 Review Dependent on Whether Questions Are of Law or of Fact

30k842(2) k. Findings of Fact and  
 Conclusions of Law. Most Cited Cases

#### Appeal and Error 30 ⚡863

##### 30 Appeal and Error 30XVI Review

##### 30XVI(A) Scope, Standards, and Extent, in General

30k862 Extent of Review Dependent on  
 Nature of Decision Appealed from

30k863 k. In General. Most Cited Cases

Supreme Court's standard for reviewing grant of summary judgment is same as that used by district court; Supreme Court initially determines whether there is absence of genuine issues of material fact; once absence of genuine issues of material fact is established, Supreme Court determines whether moving party was entitled to judgment as matter of law; in doing so, Supreme Court does not defer to district court's legal conclusions, but determines whether they are correct.

#### [2] Judgment 228 ⚡634

##### 228 Judgment

##### 228XIV Conclusiveness of Adjudication

##### 228XIV(A) Judgments Conclusive in General

228k634 k. Nature and Requisites of Former  
 Adjudication as Ground of Estoppel in General. Most Cited Cases

All of following elements are necessary for res judicata to apply: (1) parties or their privies must be same; (2) subject matter of action must be same; (3) issues must be same and relate to same subject matter; and (4) capacities of persons must be same in reference to subject matter and to issues.

#### [3] Judgment 228 ⚡695

##### 228 Judgment

##### 228XIV Conclusiveness of Adjudication

##### 228XIV(B) Persons Concluded

228k695 k. Principal and Agent. Most Cited Cases

For purposes of doctrine of res judicata, condominium association and heating and plumbing company that association hired to install new heating system in condominium owner's unit were not "privies" so as to bar owner from asserting claim against company for negligent asbestos contamination of unit after judgment was entered against owner on claims against association; no agency relationship, which might have extended res judicata to bar claims against company, existed where association did not assert right of control over company's work.

[4] Judgment 228 ⚡713(2)

228 Judgment

228XIV Conclusiveness of Adjudication

228XIV(C) Matters Concluded

228k713 Scope and Extent of Estoppel in General

228k713(2) k. Matters Which Might Have Been Litigated. Most Cited Cases

Judgment 228 ⚡720

228 Judgment

228XIV Conclusiveness of Adjudication

228XIV(C) Matters Concluded

228k716 Matters in Issue

228k720 k. Matters Actually Litigated and Determined. Most Cited Cases

Res judicata precludes claims that could have been raised in prior lawsuit as well as those actually adjudicated.

[5] Judgment 228 ⚡668(1)

228 Judgment

228XIV Conclusiveness of Adjudication

228XIV(B) Persons Concluded

228k667 Parties of Record

228k668 In General

228k668(1) k. In General. Most Cited

Cases

Judgment 228 ⚡678(1)

228 Judgment

228XIV Conclusiveness of Adjudication

228XIV(B) Persons Concluded

228k678 Privy in General

228k678(1) k. In General. Most Cited

Cases

Preclusive effect of res judicata applies only to claims raised in subsequent lawsuit between parties in original action or their privies.

[6] Judgment 228 ⚡632

228 Judgment

228XIII Merger and Bar of Causes of Action and Defenses

228XIII(C) Persons Who May Take Advantage of the Bar

228k632 k. Persons Not Parties or Privies. Most Cited Cases

Judgment 228 ⚡713(2)

228 Judgment

228XIV Conclusiveness of Adjudication

228XIV(C) Matters Concluded

228k713 Scope and Extent of Estoppel in General

228k713(2) k. Matters Which Might Have Been Litigated. Most Cited Cases

Res judicata's preclusive effect as to claims not actually litigated did not apply to condominium owner's claim for negligent asbestos contamination of his unit by heating and plumbing company hired by condominium association to install new heating system where similar claim was not litigated in prior litigation between owner and condominium association and heating and plumbing company and condominium association were not privies.

[7] Action 13 ⚡12

13 Action

13I Grounds and Conditions Precedent

13k12 k. Defenses in General. Most Cited Cases

Judgment 228 ⚡619

228 Judgment

228XIII Merger and Bar of Causes of Action and

872 P.2d 318  
264 Mont. 432, 872 P.2d 318  
(Cite as: 264 Mont. 432, 872 P.2d 318)

#### Defenses

228XIII(B) Causes of Action and Defenses  
Merged, Barred, or Concluded  
228k616 Defenses Concluded  
228k619 k. Defenses Which Might Have  
Been Urged in Former Action. Most Cited Cases

Condominium owner was not required to assert claims against heating and plumbing company that allegedly defectively installed heating system in his condominium unit in prior litigation initiated against him by condominium association arising out of same installation since condominium owner's claims against heating and plumbing company were not defense to claims asserted by association in prior litigation. Rules Civ.Proc., Rule 12(b).

[8] Judgment 228 ⚡585(1)

#### 228 Judgment

228XIII Merger and Bar of Causes of Action and Defenses

228XIII(B) Causes of Action and Defenses  
Merged, Barred, or Concluded

228k585 Identity of Cause of Action in  
General

228k585(1) k. Necessity in General.  
Most Cited Cases

Judgment 228 ⚡720

#### 228 Judgment

228XIV Conclusiveness of Adjudication

228XIV(C) Matters Concluded

228k716 Matters in Issue

228k720 k. Matters Actually Litigated  
and Determined. Most Cited Cases

While *res judicata* bars parties from relitigating claims in subsequent proceedings based on same cause of action, collateral estoppel bars reopening of issue in second cause of action that has been litigated and determined in prior suit.

[9] Judgment 228 ⚡634

#### 228 Judgment

228XIV Conclusiveness of Adjudication

228XIV(A) Judgments Conclusive in General

228k634 k. Nature and Requisites of Former

Adjudication as Ground of Estoppel in General. Most Cited Cases

Doctrine of collateral estoppel has three elements: (1) identical issue raised must have been previously decided in prior adjudication; (2) final judgment on merits was issued in prior adjudication; and (3) party against whom plea is now asserted is party or in privity in party to prior adjudication.

[10] Judgment 228 ⚡715(1)

#### 228 Judgment

228XIV Conclusiveness of Adjudication

228XIV(C) Matters Concluded

228k715 Identity of Issues, in General

228k715(1) k. In General. Most Cited Cases

Condominium owner was not collaterally estopped from asserting that heating and plumbing company which condominium association hired to install new heating unit in his condominium association negligently contaminated unit with asbestos where claim did not raise identical issues to those raised in owner's claims against association in prior suit.

**\*\*319 \*434** Charles J. Tornabene, Patterson, Marsillo, Tornabene, Schuyler & McKenna, Missoula, for appellant.

Ronald A. Bender, Worden, Thane & Haines, Missoula, for respondents.

GRAY, Justice.

Roger Holtman (Holtman) appeals from an order entered by the Fourth Judicial District Court, Missoula County, granting summary judgment in favor of 4-G's Plumbing and Heating, Inc. (4-G's Plumbing). The court determined that dismissal with prejudice of Holtman's counterclaim in a previous lawsuit barred his trespass, invasion of privacy and asbestos contamination claims against 4-G's Plumbing under the doctrines of *res judicata* and collateral estoppel. Holtman asserts error only in the court's application of the doctrines to his asbestos contamination claim. Because all of the elements of *res judicata* and collateral estoppel are not met, we reverse the court's grant of summary judgment in favor of 4-G's Plumb-

ing on that claim.

Holtman owned a condominium located in the Edgewater Townhouse Complex in Missoula, Montana. In February of 1989, the Edgewater Townhouse Homeowner's Association (the Association) authorized an employee of 4-G's Plumbing to enter Holtman's condominium, in his absence, to repair a leak and install a new heating system. When Holtman returned to his condominium, he discovered a partially installed heating system and alleged asbestos contamination. Holtman refused to allow further installation of the system.

The Association filed a complaint seeking an injunction to require the installation of the heating system. Holtman responded by generally<sup>\*435</sup> denying the Association's allegations. Nearly two years later, Holtman filed a counterclaim without leave of court. He alleged that the Association had deprived him of property rights, invaded his privacy, and contaminated his condominium with asbestos. In addition to other rulings, the court dismissed the counterclaim with prejudice because the compulsory counterclaim was not timely filed under Rule 13(a), M.R.Civ.P., and Holtman had failed to obtain leave of court pursuant to Rule 13(f), M.R.Civ.P. Both Holtman and the Association appealed. We affirmed the dismissal of Holtman's counterclaim in Edgewater Townhouse v. Holtman (1993), 256 Mont. 182, 845 P.2d 1224.

In January of 1992, Holtman filed the present action against the Association and 4-G's Plumbing, asserting claims of invasion of privacy, trespass, and asbestos contamination. The Association moved for summary judgment, arguing that the claims were barred by *res judicata*. 4-G's Plumbing <sup>\*\*320</sup> joined in the Association's motion and filed a separate motion for summary judgment relying on both *res judicata* and collateral estoppel. The District Court granted summary judgment for each defendant by separate order, dismissing the claims against the Association under *res judicata* and the claims against 4-G's Plumbing under *res judicata* and collateral estoppel. Holtman appeals only from the summary adjudication in favor of 4-G's Plumbing.

[1] Our standard for reviewing a grant of summary judgment is the same as that used by the district court, Emery v. Federated Foods (Mont.1993), 863 P.2d 426, 431, 50 St.Rep. 1454, 1456. Initially, we

determine whether there is an absence of genuine issues of material fact. Minnie v. City of Roundup (1993), 257 Mont. 429, 431, 849 P.2d 212, 214. The party moving for summary judgment has the initial burden of demonstrating a complete absence of any genuine factual issues. D'Agostino v. Swanson (1990), 240 Mont. 435, 442, 784 P.2d 919, 924. In order to meet this burden, the moving party must support its motion with an appropriate evidentiary basis. Minnie, 849 P.2d at 214. The moving party may draw from the pleadings, depositions, answers to interrogatories, and admissions on file, together with any affidavits. Rule 56(c), M.R.Civ.P.

Once an absence of genuine issues of material fact is established, we determine whether the moving party is entitled to judgment as a matter of law. Minnie, 849 P.2d at 214. Here, the District Court concluded that 4-G's Plumbing was entitled to summary judgment under the doctrines of *res judicata* and collateral estoppel. We do not defer to a district court's legal conclusions, but determine whether <sup>\*436</sup> they are correct. Steer, Inc. v. Dep't of Revenue (1990), 245 Mont. 470, 474-75, 803 P.2d 601, 603.

#### Res Judicata

[2] The doctrine of *res judicata* is grounded on the principle that litigation must at some point come to an end. Orlando v. Prewett (1989), 236 Mont. 478, 481, 771 P.2d 111, 113. It bars the relitigation of an entire cause of action once a final judgment has been entered. Marriage of Stout (1985), 216 Mont. 342, 349, 701 P.2d 729, 733. All of the following elements are necessary for *res judicata* to apply:

- 1) the parties or their privies must be the same;
- 2) the subject matter of the action must be the same;
- 3) the issues must be the same and relate to the same subject matter; and
- 4) the capacities of the persons must be the same in reference to the subject matter and to the issues.

Tisher v. Norwest Capital Mgmt. (1993), 260 Mont. 143, 149, 859 P.2d 984, 987-88.

[3] Holtman asserts that his "asbestos contami-

nation" claim alleges negligent workmanship on the part of 4-G's Plumbing in the installation of the heating system. Because his prior counterclaim against the Association contained no such claim, he argues that none of the elements of *res judicata* is met. 4-G's Plumbing urges application of the doctrine, asserting that the claims advanced in the complaint do not contain an allegation of negligent workmanship, but are identical to those raised in the prior counterclaim.

Holtman's asbestos contamination claim reads as follows:

That said defendant, 4-G's Plumbing & Heating, Inc., in the process of installing said hot water heating system in Plaintiff's home, disturbed older plumbing pipes, which were contaminated with asbestos, resulting in asbestos contamination of Plaintiff's home and the personal property contained therein.

This asbestos contamination claim-as alleged-is hardly a model of clarity. However, 4-G's Plumbing did not move for summary judgment on the basis of a failure to state a claim upon which relief could be granted or challenge the claim as alleged in any other way. We decline to rule on an issue that was not presented to the District Court. Goodover v. Lindsey's, Inc. (1992), 255 Mont. 430, 441, 843 P.2d 765, 772. Thus, we address the applicability of *res judicata* to Holtman's asbestos contamination claim to the extent that claim is \*437 read to allege negligent\*\*321 workmanship by 4-G's Plumbing in the installation of the heating system.

The "parties or their privies" element of *res judicata* is dispositive here. It is undisputed that 4-G's Plumbing was not a party to the prior litigation. The District Court determined, however, that 4-G's Plumbing and the Association were privies because they "acted in concert."

We previously have focused on whether a defendant's legal right or interest has been represented by the previous litigant to determine whether the two are privies. As we stated in Brault v. Smith (1984), 209 Mont. 21, 27, 679 P.2d 236, 239, the concept of a "privy" in the context of a judgment applies to one whose interest has been legally represented at trial. We have similarly defined privies as those who are so connected in estate or in blood or in law as to be identified with the same interest and, consequently,

affected with each other by litigation. Tisher, 859 P.2d at 988.

As the party moving for summary judgment, 4-G's Plumbing had the initial burden of demonstrating the absence of a genuine issue of material fact and entitlement to judgment as a matter of law on the privity element. 4-G's Plumbing did not file an answer to Holtman's complaint; nor did it submit any depositions, answers to interrogatories, admissions or affidavits to support its motion for summary judgment. Thus, it did not provide any evidentiary basis for summary adjudication.

By joining the Association's motion for summary judgment, however, 4-G's Plumbing ostensibly adopted the Association's evidentiary basis for summary judgment, including copies of the prior counterclaim, the order striking it with prejudice, and the findings and rulings contained in the court file relating to the previous litigation. Therefore, we focus on whether these materials form a sufficient basis for summary judgment on the issue of privity-a shared legal interest-between the Association and 4-G's Plumbing on the asbestos contamination claim.

The materials indicate that the Association hired 4-G's Plumbing and allowed its employee into the condominium to install the heating system, supporting the District Court's determination that the two "acted in concert" in entering the condominium. This mutual conduct in entering the condominium, however, does not establish that the Association shared a legal interest with 4-G's Plumbing with regard to its workmanship in the installation of the heating system. Thus, the court's conclusion that the Association and 4-G's Plumbing are privies, in the context of the asbestos contamination claim, is incorrect.

\*438 4-G's Plumbing attempts to establish a shared legal interest in the asbestos contamination claim to the extent that claim alleges negligent workmanship by arguing that it acted as an agent of the Association in installing the heating system. An agency relationship would exist if the Association controlled or had the right to control the physical conduct of 4-G's Plumbing in the installation of the heating system. See Eccleston v. Third Jud. Dist. Ct. (1989), 240 Mont. 44, 51-52, 783 P.2d 363, 368, quoting Restatement (Second) of Agency, § 2. Nothing in the record of the prior litigation or the present



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case establishes such a right of control. We conclude that the materials relied on by 4-G's Plumbing to support summary adjudication do not establish that it was a privy of the Association with regard to the asbestos contamination claim.

4-G's Plumbing advances two other arguments, loosely tied to the doctrine of *res judicata*, to bar Holtman's asbestos contamination claim. Based on its assertion that Holtman could have raised the claim in the prior proceeding, 4-G's Plumbing argues that he is barred by the doctrine from doing so here.

[4][5][6] It is true that *res judicata* precludes claims that could have been raised in the prior lawsuit as well as those actually adjudicated. Beck v. Flathead County (1989), 240 Mont. 128, 133, 783 P.2d 383, 386; Orlando v. Prewett (1989), 236 Mont. 478, 481, 771 P.2d 111, 113. The preclusive effect of *res judicata*, however, applies only to claims raised in subsequent lawsuits between the parties in the original action or their privies, reflecting the "parties or their privies"\*\*\*322 element of the doctrine. Beck, 783 P.2d at 386; Orlando, 771 P.2d at 113. Thus, *res judicata*'s preclusive effect as to claims not actually litigated does not apply to the case before us.

[7] Finally, 4-G's Plumbing asserts that Rule 12(b), M.R.Civ.P., required Holtman to assert his claims against it in the prior litigation. Rule 12(b), M.R.Civ.P., requires that every *defense* to a claim, counterclaim or third-party claim be raised in the responsive pleading. Holtman's claims against 4-G's Plumbing were not a defense to the claims asserted by the Association in the prior litigation. Thus, he was not required by Rule 12(b), M.R.Civ.P., to file his claims against 4-G's Plumbing in that action.

4-G's Plumbing has not demonstrated that the "parties or their privies" element of *res judicata* is met. We hold that the District Court erred in applying *res judicata* to bar Holtman's asbestos contamination claim against 4-G's Plumbing.

#### Collateral Estoppel

\* Again focusing entirely on the asbestos contamination claim, Holtman asserts that the District Court erred in concluding that 4-G's Plumbing was entitled to summary judgment under the doctrine of collateral estoppel. He contends that collateral estoppel does not bar the claim because the issue of

4-G's Plumbing's negligence was not raised in his prior counterclaim.

[8][9] Collateral estoppel, sometimes referred to as issue preclusion, is a form of *res judicata*. While *res judicata* bars parties from relitigating claims in subsequent proceedings based on the same cause of action, collateral estoppel bars the reopening of an issue in a second cause of action that has been litigated and determined in a prior suit. Linder v. Missoula County (1992), 251 Mont. 292, 294, 824 P.2d 1004, 1005. The doctrine has three elements:

1) the identical issue raised has been previously decided in a prior adjudication;

2) a final judgment on the merits was issued in the prior adjudication; and

3) the party against whom the plea is now asserted was a party or in privity with a party to the prior adjudication.

State v. Young (1993), 259 Mont. 371, 377, 856 P.2d 961, 965. Our analysis need not proceed beyond the first element.

[10] Identity of issues is the most crucial element of collateral estoppel. Anderson v. State (1991), 250 Mont. 18, 21, 817 P.2d 699, 702. In order to satisfy this element, the identical issue or "precise question" must have been litigated in the prior action. Anderson, 817 P.2d at 702. To determine whether the issue raised is identical, we compare the pleadings, evidence and circumstances surrounding the two actions. Aetna Life Ins. Co. v. McElvain (1986), 221 Mont. 138, 146, 717 P.2d 1081, 1086. We note that we have only the asbestos-related allegations to examine from the previous litigation since Holtman's counterclaim was dismissed on legal grounds prior to the receipt of any evidence on the claim.

It is true that Holtman's prior counterclaim against the Association arose from the same events as his claim against 4-G's Plumbing and, like his present claim, sought damages for the alleged asbestos contamination. Holtman's asbestos-related contamination claim against the Association in the prior litigation was as follows:

[The Association] did, without the knowledge or consent of [Holtman], terminate the heating service to [Holtman's] unit sometime between March, 1988 and February 5, 1989, which resulted in \*440 certain waterlines freezing, breaking and creating water leaks in [Holtman's] unit and subsequently therewith caused the asbestos covering of certain pipes to be removed and generally distributed throughout the unit, all of which rendered [Holtman's] unit damaged, unsafe and uninhabitable.

When this claim is compared to Holtman's asbestos contamination claim against 4-G's Plumbing set forth above, it is clear that the identical issue, or precise question, raised in the present case was not raised and decided in the earlier litigation involving the Association.

Holtman's prior asbestos-related claim can be read as alleging an intentional wrongful \*\*323 act by the Association-the unauthorized termination of heat to the condominium-followed by all the damage that flowed therefrom, including broken waterlines and asbestos disturbance and distribution. To the extent the prior claim is read in this fashion, it is clear that the issue of the alleged negligence of 4-G's Plumbing in the present case is not identical.

Furthermore, to the extent the prior asbestos-related claim is read as an allegation of negligence against the Association resulting in asbestos contamination, that claim did not raise the issue of 4-G's Plumbing's negligent workmanship in the installation of the new heating system. A negligence action is premised, first, on the existence of a duty. Nautilus Ins. v. First National Ins. (1992), 254 Mont. 296, 299, 837 P.2d 409, 411. 4-G's Plumbing has not established that its legal duties to Holtman in installing the new heating system were co-extensive with the duties owed him by the Association.

We conclude that the "identical issue" element of collateral estoppel is not met under the circumstances before us. Therefore, we hold that the District Court erred in concluding that Holtman is collaterally estopped from asserting the asbestos contamination claim and in granting summary judgment in favor of 4-G's Plumbing on that claim.

Reversed and remanded for further proceedings consistent with this opinion.

TURNAGE, C.J., HARRISON, HUNT, TRIE-WEILER, NELSON and WEBER, JJ., concur.

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